

Al-Jihad wa'l Qital fi as-Siyasa ash-Shar'iyya

Jihad and fighting according to the sharia rules of governance



English translation of the contents page only

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CONTENTS

Page	Heading
Alif)	Introduction
Taa)	The plan of research/study.
3)	Preface: A brief glimpse at the history of wars before Islam and what motivated them (Contents of the preface)
5)	Brief glimpse at the history of wars
5)	Examples (images) of the wars in the centuries of peace.
6)	Examples (images) of the wars in the centuries of struggle.
7)	Incursions of the Ruhhal (roaming nomadic) tribes upon the Nile valley and what lies between the Raafidain.
8)	Ancient Egypt until the conquest of Islaam.
10)	The Assyrian empire.
11)	Greece, Alexander the Macedonian and his conquests.
11)	After Alexander and the rise of the Roman State and its conquests.
11)	The Persian Kingdom and its struggle with the Roman State.
13)	The Arabian Peninsula and a look at its war history.
15)	1. The essential need of living.
15)	2. Avarice and begrudging (Istikthaar).
16)	3. Deterrence and terrorising.
16)	4. Retaliation and revenge.
17)	5. Helping the oppressed who is seeking help.
18)	6. Washing the insult of the guest with blood.
18)	7. Covetousness upon the reputations (honour).
18)	8. The obtaining of slaves for reasons of pride and humiliating others.
19)	9. Enforcing dominance over others by use of power.
19)	10. Some concepts from the Jaahilliyah used to incite fighting.

20)	11. Obtaining material benefits and the cheap hand used to strike the slavery of those who are defeated.
20)	12. The difference in regards to the Deen, merely for reasons of partisanship or to make Da'wah to the truth.
21)	13. The struggle over the authority (for power).
22)	14. The struggle over important lands (Strategic).
22)	15. Suppressing internal revolutions and in the outskirt provinces.
23)	16. Interference in the internal affairs of other states.
23)	17. Control over the world.
23)	18. The different methods/modes of living life.
24)	19. Founding a unity amongst the people and the state.
24)	20. Liberating the land from the foreign occupation.
25)	21. Covetousness in inheriting the nations.
25)	22. Restoring the balance (of power) with the rival.
25)	23. Protecting the foreign interests of the land.
26)	24. Breaking the treaties between countries.
26)	25. Compulsion to enter into alliances.
27)	26. Entangling of states with treaties until they break the treaties and then use this breaking of the treaty to make a declaration of war against it.
27)	27. Fearing the future strength of the foe and striking it before it gains strength (Pre-emptive strike).
27)	28. Dealing decisively with the separatist movements and those who usurp authority in the out skirting lands.
28)	29. Cleaning up one's own house: Cleansing the land from forces of disorder and corruption or from those who have ambition to take authority.
29)	30. War by delegation (Wakaalah).
29)	Focus for the preceding reasons.

Chapter One

Al-Jihaad and other forms of fighting (Qitaal) in Islaam.

SECTION ONE Definition of Al-Jihaad according to the language, Shar'a, 'Urf (custom) and Istilaah (terminology).	
35)	An introduction to the Ta'reef (definition).
35)	Sources for the definition.
36)	The meaning of Alfaazh (worded expressions) according to the Arabic language.
38)	a) Al-Jihaad according to what the language has laid down.
40)	b) Al-Jihaad according to what the Shar'a has laid down.
44)	c) Al-Jihaad according to what the Al-'Urf Al-'Aamm (general custom) has laid down.
45)	d) Al-Jihaad according to what the Al-'Urf Al-Khaass (specific custom) has laid down.
SECTION TWO The types of fighting (Qitaal) in Islaam and which can the Shar'a definition of Jihaad be truthfully applied upon?	
51)	A narrative of the types of Qitaal that we will study.
53)	The first study: The Qitaal of the Ahlu-r-Riddah (people of apostasy).
55)	How does Riddah (apostasy) occur?
57)	The Hukm of the apostates who are individuals living under the authority of the state.
58)	The Hukm of the apostates who are rebelling against the authority, the abstainers (withholders) in a province from amongst the provinces of the state.
58)	Is the Qitaal against the apostates Jihaad in the way of Allah?
61)	The second study: The Qitaal of Ahlu-l-Baghi (the people of rebellion).
63)	Who are the people of Ahlu-l-Baghi?
65)	What is obligatory in regards to dealing with the Bughaa?
66)	Is fighting the people of Baghi Jihaad in the way of Allah according to the Shar'i meaning?

71)	The third study: Qitaal of the Muhaaribeen (those who cut the path or perform highway robbery (Al-Hiraabah)).
73)	Who are the Muhaariboon?
74)	What is obligatory in relation to dealing with the Muhaariboon?
74)	Is fighting the Muhaariboon Jihaad in the way of Allah?
77)	The fourth study: Qitaal in defence of the individual sanctities: The self, honour, property i.e. Qitaal against As-Siyaal (Assault).
79)	Introduction around the definition of the Siyaal and the general evidence for fighting in defence of the individual (private) sanctities.
81)	What are the individual (private) sanctities? Defending the individual sanctities by Qitaal
81)	Firstly: Defence by Qitaal, defending of oneself (Nafs).
82)	a) Defending oneself – Waajib.
82)	b) Surrendering to be killed and abandoning the defence of oneself – Mandoob.
83)	c) Surrendering to be killed – Mubaah.
83)	Secondly: Defence by Qitaal, defending ones honour ('Ird).
84)	Thirdly: Defence by Qitaal, defending ones property (Maal).
84)	a) The defending of one's property by Qitaal – Waajib.
85)	b) The defending of one's property by Qitaal – Mubaah.
85)	c) Abandoning the defence of one's property by Qitaal –Waajib.
87)	Is fighting the people of Siyaal to defend the private individual sanctities Jihaad in the way of Allah?
89)	The Fifth Study: Qitaal to defend the public ('Aammah) sanctities within the Islamic Society.
91)	Introduction to the definition of the Hurumaat Al-'Aammah (public sanctities) and the general ('Aamm) Shar'i Daleel for fighting in defence of them.
93)	Firstly: The rules of renouncing (denying) the Munkar in different circumstances.
93)	1. The origin of renouncing the Munkar is Fard Kifaayah (upon

	sufficiency).
93)	2. And it could become Fard 'Ain (upon the individual).
94)	3. The renouncing could be Haraam.
94)	4. And it could be Mandoob.
95)	5. If a Harm is built upon the renouncing (Inkaar) afflicted upon other than the (people) of Munkar.
96)	6. It could be that the one committing the Munkar is the person holding authority in the land.
96)	a) It is obligatory to renounce/denounce with softness (flexibility/leniency) in speech.
96)	b) It could be Mandoob to use harshness (roughness).
97)	c) Harshness could be Haraam.
97)	d) It is Haraam to strike the Haakim (ruler) to prevent him from a Munkar he is committing.
97)	e) It is Haraam to use the weapon against the Haakim due to his Fisq or oppression.
98)	The Adillah Shar'iyah (evidences) for the preceding Ahkaam.
100)	The obligation to make the Haakim (ruler) step down from authority due to Fisq or Zhulm via peaceful means.
103)	Secondly: The legality to fight whilst renouncing the Munkaraat and the levels of renouncing (Inkaar) that precede the fighting.
103)	1. Finding out about the Munkaraat without spying (Tajussus).
104)	2. Bringing it to the attention of the people of the Munkaraat and exhorting them (Wa'zh).
105)	3. Striking the people of Munkaraat.
105)	4. Fighting (Qitaal) against the people of the Munkaraat if the issue necessitates it and the issue of the permission of the state for it.
108)	Thirdly: Is Al-Qitaal performed to remove the Munkaraat and to defend the public sanctities Jihaad in the way of Allah?
111)	The sixth Study: The Qitaal against the Inhiraaf (deviation) of the ruler.
113)	Points related to this study:

	And the basis upon which we rely upon to solve the subject:
116)	Firstly: The deviation of the Haakim, how does it happen?
116)	By abandoning sticking to Islaam in his own personal behaviour or in his internal and foreign policies.
117)	Examples of the deviations that the Shar'iyah texts have mentioned.
117)	The committal of acts of disobedience (Ma'aasi) by the Haakim.
117)	Commanding the subjects to commit acts of disobedience.
117)	Monopolising of the material portions for himself and those who are close to him.
117)	Aggression upon individuals of the Ummah through torture and confiscation of wealth.
118)	What is the origin in regards to the Muslim Haakim?
119)	What is the stance of the Ummah in regards to a Haakim that has fallen into deviation?
119)	Secondly: The opinions of the Fuqahaa and Islaamic Mufakkireen (thinkers) in regards to using force (weapons) to topple the deviating Haakim and what is our opinion?
119)	The opinions of the early 'Ulamaa. Fiqhi explanation of the view that armed Khurooj (going against the Haakim) is obligatory against every deviation from the Haakim whether this was Kufr or less than it (doonuhu), the view that the armed Khurooj against the Haakim occurs in the circumstance of Al-Kufr Al-Bawaah and the view that it is Mubaah (permissible) to do Khurooj or leave it in the deviation which is less than Kufr Bawaah.
124)	Opinions of the recent Islaamic thinkers.
125)	Discussion of the opinion of Ibn Hazm in regards to the texts that make it obligatory to obey the Haakim Al-Faasiq or Jaa'ir (oppressive) unless he commands a Ma'siyah (disobedience), that they have been abrogated.
126)	Discussion of the opinion of the Mu'tazilah which states that it is obligatory to fight the Haakim if he is commits Fisq or Zhulm.
126)	Ash-Shawkaani responds against 'Al-Karraamiyah' in regards to their accusations against Al-Hussain Bin 'Ali (ra) that he was from the people of Baghi (illegitimate rebellion) due to his Khurooj against Yazeed Bin Mu'aawiyah!
127)	The opinion which we believe to be strongest in regards to the Khurooj against the Haakim who has deviated.

127)	a) The obligation of Sabr (patience) and refraining from fighting...when?
127)	What is the Inhiraaf which legitimises the use of arms (force)?
129)	Clarifying the difference between the Fisq of the Haakim in which it is not allowed to revolt against him for and the Ma'siyah Al-Bawaah in which it is legitimate to revolt.
130)	b) The obligation of using the armed revolt upon the appearance of Kufr Bawaah.
130)	What represents Kufr Bawaah?
130)	1. The Kufr of the Haakim himself.
130)	2. The apostasy of people from Islaam without denunciation.
131)	Establishing the ruling system upon the Aqueedah of Kufr.
131)	Clarifying the difference in regards to the issue of the appearance of deviations under the shade of a Nizhaam (system/regime) that condones it and the appearance in the shade of a Nizhaam that does not approve it.
133)	It is essential for there to be a Qat'iy (decisive) evidence for it be considered Kufr Bawaah.
133)	If there is Ikhtilaaf (difference/dispute) the issue returns to the Judiciary for them to judge whether Kufr Bawaah has appeared or not.
134)	When Qitaal against the deviation is not legitimate – How is it dealt with according to Islaam?
136)	Does the Hukm of the legitimacy of Al-Qitaal against Kufr Bawaah apply to the situation of the Islaamic lands today and what is its case? Clarifying the difference between lands, between those who have changed towards Kufr Bawaah and those who have settled upon Kufr Bawaah for a long period of time and the general Islaamic climate has been removed from it.
137)	The lack of legality of fighting to deal decisively with the deviations within the lands in which Kufr Bawaah has settled and the Islaamic environment has weakened does not mean not working to resume the Islaamic way of life.
139)	Thirdly: Is the legitimate Qitaal against the deviation (Inhiraaf) of the Haakim Jihaad in the way of Allah?
141)	The Seventh Study: The Qitaal of Fitnah.
143)	The meaning of Qitaal of Fitnah.

146)	The situations/circumstances of Qitaal Al-Fitnah.
146)	1. The case where the one who is on the right and the one who is false is not apparent.
146)	2. When both fighting parties are Zhaalim.
146)	3. When there is no Imaam to designate the oppressive (Zhaalim) party and order that they be fought.
147)	4. The case of fighting seeking authority.
147)	The Fiqhi opinions in relation to the Hukm of Qitaal Al-Fitnah and the opinion that we believe to be strongest.
147)	Firstly: The role of the people of Islaah (reform).
149)	Secondly: The Hukm of Qitaal in (the situation of) Al-Fitnah in its different circumstances.
149)	The first point: The Hukm of the Muslim participating in the fighting that is taking place between warring factions in the Qitaal of Fitnah.
153)	The Hukm of the Muslim defending that which it is his Haqq (right) to defend when if bad is intended from the warring factions in the Qitaal of Fitnah.
153)	The first opinion: Tahreem (prohibition) of defending oneself.
154)	The second opinion: The legitimacy of defending oneself.
156)	The opinion that we believe to be strongest.
158)	The opinions of the 'Ulamaa in regards to the Hukm of surrendering and leaving the defending of oneself in the situation of the Qitaal of Fitnah.
158)	1. The defending of oneself is Makrooh.
158)	2. The defending of oneself is Mubaah.
158)	3. Abandoning the defending of oneself is Mandoob.
159)	4. Surrendering and leaving the defending of oneself is Waajib.
160)	The opinion that we believe to be strongest.
162)	Is the Qitaal of Fitnah Jihaad in the way of Allah?
165)	The eighth study: Fighting the one who has usurped the authority.
167)	Introduction around the contracting the political authority in Islaam.

167)	The contracting of the Bai'ah is the origin of legitimacy for the taking of the authority.
168)	The textual method for the infallible Imaam to acquire the authority – It is not established in an acceptable manner.
168)	The method of Istikhlaaf (handing over) or Wilaayat-ul-'Aqd (handing over) - The mere nomination of the previous Khaleefah leads to contracting upon him...If the people refuse to give him the Bai'ah he has not become the Khaleefah.
168)	The method of Taghallub (overpowering) which is usurpation (Ightisaab) of the authority...If the people refuse to give the Bai'ah to the Mutagallib (usurper) then his authority remains without legitimacy.
169)	The evidences for the opinion that the Imaamah (leadership) is convened by overpowering and force with a discussion about this.
169)	The first Daleel (evidence) with discussion: The statement of 'Abdullah Bin 'Amr in relation to the right of Mu'aawiyah: Obey him in the obedience of Allah.
171)	The second Daleel with discussion: The Hadeeth: And even if ...is paced as an Ameer over you...
183)	The third Daleel with discussion: The command to be patient with the oppressive rulers.
185)	The fourth Daleel with discussion: The exception of the Sultaan (person in authority) in regards to the legitimacy to fight the Mughtasib (usurper).
186)	The fifth Daleel with discussion: The silence over the usurper of the authority due to the lesser of the two evils.
191)	Research points related to fighting the one who has usurped the authority (Mughtasib As-Sultah).
191)	Firstly: What is the Daleel for the legality of fighting the usurper of the authority?
194)	Secondly: What is the specific Hukm Shari' for the legality of fighting the Mughtasib (usurper)?
200)	Is the Qitaal (fighting) against the Mughtasib of the authority fighting Jihaad in the way of Allah?
203)	The ninth study: The fighting of the Ahlu-dh-Dhimmah (non-Muslims living under the Islamic protectorate).
205)	Introduction...And the Masaa'il (issues) that are included in the study.
206)	The first issue: Who are Ahlu-dh-Dhimmah? What are their duties? What are their rights?

206)	a. Definition of Ahlu-dh-Dhimmah.
208)	b. What are the duties (Waajibaat) of the Ahlu-dh-Dhimmah?
209)	c. What are the rights (Huqooq) of the Ahlu-dh-Dhimmah?
210)	The second issue: The violations that make the Ahlu-dh-Dhimmah invalidate the contract in a collective manner and what are the consequences of this?
211)	The first point: The Islaamic Fiqhi opinions in regards to the things that invalidate the contract.
213)	The second point: What are the consequences of invalidating the 'Aqd (contract)?
213)	The situations where the Ahlu-dh-Dhimmah raise arms against the Muslims.
214)	1. Participating with the Ahl-ul-Baghi against the Muslims.
215)	2. Raising arms against those rebelling (Al-Bughaat) against the Muslims.
215)	3. Raising arms to cut the path.
215)	4. Raising arms in an independent manner.
216)	5. Raising arms to join forces with the people of war (Ahlu-l-Harb).
217)	The situations leading to the invalidation of the contract which is not related to raising arms.
217)	The third point: Does the breaking of the covenant ('Ahd) relate specifically to the one who has committed the act, that which broke the covenant? Or does its the Hukm go beyond them to others as well?
218)	Two points related to the Ahlu-dh-Dhimmah in our current time – i.e. after the removal of the Islamic State.
218)	The first point: What is the ruling of Ahlu-dh-Dhimmah in the time that we presently live? Second point: What is the ruling of the Ahlu-dh-Dhimmah today going outside of the conditions that were taken upon their predecessors before them?
219)	Is the 'Ahd (covenant) broken by this Khurooj (going outside of the conditions)? Or not?
227)	The third issue: Is Qitaal against the Ahlu-dh-Dhimmah who have broken their covenant considered Jihaad in the way of Allah?

228)	Final point of note.
229)	The tenth study: Qitaal Al-Ghaarah (attack) for the sake of obtaining the property of the enemy
233)	Introduction about the definition of the subject of this study and its main issues
234)	The first issue: Is it permitted for the individual fighter or fighting group to face a larger force of enemies that outnumber them many times over?
238)	The Hukm of Mughamarah and Mukhaataarah (being adventurous and taking risks) with your life when attacking a large enemy.
239)	The first opinion: Absolute (Mutlaq) permissibility.
239)	The second opinion: At-Tafseel (detail/particularity).
242)	The opinion that we believe is strongest.
245)	The second issue: Is it permitted to fight without the permission of the Imaam or the Ameer who possesses the authority?
246)	Outlines around the mission of the Nabi صلى الله عليه وسلم in explaining what is conveyed from Allah 'Azza Wa Jalla with a general picture and the necessity to return back to the Seerah and Prophetic Sunnah in order to make clear the manner of how the enemy should be fought.
246)	Firstly: The Messenger صلى الله عليه وسلم led the fighting against the enemies himself sometimes and by appointing leaders at other times.
247)	Secondly: Salamah Bin Al-Akwa' (ra) fighting the enemy Al-Mugheer before attaining the permission from the Nabi صلى الله عليه وسلم.
247)	Thirdly: Abu Baseer and his group (rah) fighting the Quraish within the period of the treaty with the Muslims because they were not included in the convening of the truce of Hudaibiyah.
249)	Fourthly: The man Al-Ashja'iy taking possession of the property of the enemy from Daaru-l-Harb (Land of war) like a thief would without the previous specific permission of the Nabi صلى الله عليه وسلم.
249)	Fifthly: A man fighting the enemy at Khaibar and was then martyred after having been forbidden by the Nabi صلى الله عليه وسلم to fight and it was said in regards to him: Jannah is not Halaal for the disobedient.
250)	The points of discussion in this Mas'alah (issue):
250)	The first point: Is the presence of the Imaam a Shart (condition) for fighting the enemy whether this fighting was offensive or defensive?

251)	The second point: What is the role of the presence of the Imaam in terms of the permission to engage in fighting?
252)	The case where the Imaam has not issued an order not to fight.
252)	The first opinion: The fighting without the permission of the Imaam is Haraam.
253)	The second opinion: The fighting without the permission of the Imaam is Makrooh.
255)	The case where if the Imaam had issued a forbiddance to fight. In regards to the defensive fighting (two cases/situations).
255)	The first: The forbidding that does not lead to the harming of the Muslims.
255)	The second: The forbidding that does lead to the harming of the Muslims.
257)	In relation to the offensive fighting there are two situations:
257)	The first: The forbidding is for a legitimate Maslahah (interest).
258)	The second: The forbidding is not for a legitimate Maslahah.
260)	The third point: What is the Hukm in abiding to the obedience of the people in authority today in regards to fighting the enemy when they issue their commands whether in regards to engage in fighting or to refrain from it?
260)	The first issue: The issuing of the command to fight from the people of authority and does the view that they do not have legitimacy have an effect upon the Hukm?
261)	What if the people of authority today ordered fighting against the enemy in accordance to a conniving plan that will bring harm to the Muslims?
268)	The second issue: The issuing of the decision to forbid fighting from the people of authority.
268)	The first point: The forbiddance of fighting due to a Maslahah.
268)	The second point: The forbiddance to fight not due to a Maslahah.
270)	The third issue: Is it allowed for a Muslim to fight the enemy for the purpose of taking hold of his properties?
270)	Reports from the Seerah of the Nabi صلى الله عليه وسلم around the issue of facing the enemy to take possession of his properties.
273)	The purpose of taking possession over the property (wealth) of the enemy through fighting, for the sake of putting pressure upon him is included under raising the word of Allah 'Azza Wa Jalla the highest.

273)	What are the purposes that are Haraam to be sought in the fighting? And the issue of Tashreeq in 'Ibaadah and from it Jihaad in the way of Allah.
277)	Daar-ul-'Aduw (the abode of the enemy) is the Daar (land) of Nuhbah (plunder) and Daar of Ibaahah (permissibility) as long as it has not entered into the Hukm (ruling) of Amaan (security) and the strangeness of the view of Ash-Shawkaani in the Mas'alah (issue).
278)	The permissibility of the property of the enemy: It is a general 'Urf (custom) and a means from amongst the means of applying pressure upon the enemy.
280)	The fourth issue: Is the Qitaal for the purpose of taking the property of the enemy considered Jihaad in the way of Allah?
285)	The Eleventh Study: Al-Qitaal (fighting) to establish the Dawlah Al-Islaamiyah (Islamic State).
287)	Introduction around the fundamentals of the study.
288)	The first issue: The opinions of the Kuttaab Al-Islaamiyeen (Islamic writers) in terms of the idea of fighting to establish the Islamic State.
288)	a) The first direction: The rejection of using the Silaah (arms) to establish the Islamic State.
288)	1) Al-Mawdoodi
289)	2) Ash-Sheikh Muhammad Naasir Ad-Deen Al-Albaani
290)	Ad-Doctoor Muhammad Sa'eed Ramadhaan Al-Booti
291)	The second direction: The call to Jihad to establish the Islamic State.
291)	Jamaa'at-ul-Jihaad in Egypt and their responses to the objections that are directed to them from those who reject the use of the Silaah (arms/force) to establish the Islamic State.
291)	The first objection: The Islamic State was established only by the [peaceful Da'wah by way of a political party.
292)	The second objection: The Islamic State was established only by isolating from the community (Society) and making Hijrah from it so as to obtain the strength (power) and then return to it.
292)	The third objection: Busying oneself with politics implants harshness in the hearts.
293)	The fourth objection: The fear of failure in the attempt to establish the Islamic State via fighting (Qitaal).

294)	The second issue: The Adillah (evidences) for those who say Al-Qitaal is legal (Mashroo') or not legal to establish the Islamic State with a discussion of the evidences and an explanation of the opinion that we have outweighed to be strongest (Raajih).
294)	a. The evidences (Adillah) for those who say that Qitaal is not Mashroo' (legally valid) to establish the Islamic State.
294)	The first Daleel: The expected harm (Darar) resulting from the use of Silaah (arms).
295)	The second Daleel: The command of the Shar'a to have patience upon the oppressive rule and the consideration of the Hukkaam (rulers) today as Hukkaam Al-Munharifeen (deviating rulers).
295)	The third Daleel: The coups that have occurred in recent times are from amongst the acts of Bid'ah of this age!
296)	The fourth evidence: The Shar'iyah method to change the situation is to change that which is within ourselves.
296)	b. The Adillah (evidences) for those who say that establishing the Islamic State by way of Al-Qitaal is Mashroo' (legally valid).
296)	The first Daleel: The evidence of apostasy.
297)	The second Daleel: The Qaa'idah (legal principle): Maa Laa Yatimmul Waajib Illaa Bihi Fa Huwa Waajib (That which the Waajib is not fulfilled except with it, is Waajib).
297)	The third Daleel: The Wujooob (obligation) of Jihaad upon every Muslim in every Muslim land occupied by the Kaafir (disbelieving) enemy.
297)	The fourth evidence: Al-Kufr-ul-Bawaah (the blatant Kufr).
298)	c) Discussing the evidences of the negative direction in regards to the issue of fighting to Islamic State.
298)	1. Discussing the Daleel of Ad-Darar (harm).
300)	2. Discussing the consideration of the present day rulers as Shari' (legitimate) rulers who have deviated in terms of disobedience (Fisq) or oppression (Jawr).
302)	3. Discussing the consideration of military coups to change the situation as being of the Bid'a (innovations) of this time.
302)	4. Discussing the limiting of the legitimate changing of the deviated situation to the changing of that which is in oneself (Nafs).
306)	d) Discussing the Adillah of the positive direction if the issue of Qitaal (fighting) to establish the Islamic State.

306)	1. Discussing the Daleel of Riddah (apostasy).
308)	2. Discussing the Daleel: Maa Laa Yatimmul Waajib Illaa Bihi Fa Huwa Waajib (That which the Waajib is not fulfilled except with it, is Waajib).
310)	3. Discussing the Daleel: The Fard of Jihaad in the face of the enemy occupying the land and the consideration of the Hukkaam (Rulers) today as being enemies who have occupied the Muslim lands.
312)	4. Discussing the Daleel: Al-Kufr-ul-Bawaah (The open/blatant Kufr).
313)	e. The opinion that we outweigh to be strongest with the Daleel.
315)	The Bai'ah (pledge) of the Ansaar upon Harb (War) on the night of Al-'Aqabah and the Bunood (articles) upon which the Bai'ah was made upon their basis.
319)	The Tareeqah (method) to establish the Khilafah in our present time.
319)	1. The establishing of environments (Ajwaa) that respond (interact) with the Da'wah.
319)	2. A study about Ahl-un-Nusrah (the people qualified to give support) of those who possess the capability.
320)	3. 'Aqd-ul-Bai'ah (the contract of Bai'ah) for the one who is chosen as the Ra'ees (head) of the Sultah (authority)... by the protection of the Ahl-un-Nusrah.
320)	What if some of the powerful forces rebel against the new situation?
321)	The third issue Is Qitaal for the purpose of establishing the Islamic State considered Jihaad in the way of Allah?
323)	The twelfth study: The Qitaal for the purpose of the unity of the Islamic lands.
325)	Introduction around the aspects of the study and the fundamental issues related to it.
327)	The first issue: The Islamic position in respect to the situation of unity between the Muslim lands.
327)	The first part: The Islamic position in respect to the unity between Muslim lands as mentioned in the Shar'iyah Nusoos (texts).
327)	Firstly: The Prophetic Ahaadeeth that specify the issue of unity (Wahdah).
329)	Secondly: The Wajh of Istidlaal (point of deduction) in relation to the previous texts in regards to the issue of unity and what the Fuqahaa have established in respect to this in light of these texts.

334)	The second part: The position that some Islamic Ijtihadaat have seen in regards to the issue of Wahdah (unity) and our discussion of these Ijtihadaat.
334)	Firstly: The opinion of some of those who came before (Mutaqaddimeen).
334)	The Shaadh (out of the norm) opinion indicated to by Al-Maawardi.
335)	The opinion of Imam Al-Juwaini and the commentary of Imam An-Nawawi upon it.
335)	Discussion of the opinion of Imam Al-Juwaini.
337)	Secondly: The opinion of some of those who came later.
338)	The opinion of Imam Ash-Shawkaani and the follow up of Siddeeq Bin Hasan Al-Qanooji to it.
341)	Discussion of the opinion of Ash-Shawkaani and Al-Qanooji.
345)	The opinion of some those from the present time:
345)	The opinion of Shaikh Muhammad Zahrah.
347)	Discussion of the opinion of the Sheikh Abu Zahrah.
352)	The second issue: The Shari' position of fighting to enforce the unity between the Islamic lands.
354)	The situations of fighting in the past: The first situation: The fighting as a response to the removal of obedience to the Khalifah in some of the provinces and the formation of a separate state.
355)	The second situation: The fighting (Qitaal) to cause the failure of a revolting Khalifah that he has claimed for himself in a separate province so that he can take the place of the standing Khalifah and unify the lands under his authority.
357)	The first picture (reality): The establishment of a revolution in a province from amongst the provinces of an independent state and the formation of a separate state and the Qitaal (fighting) to put an end to this separation.
358)	The second picture (reality): The separation of a province from the mother state and the formation of a separate state without the occurrence of a revolution or the spilling of blood... And the Qitaal to return the original previously existent Wahdah (unity).
358)	The third picture (reality): What if a state from amongst the Islamic lands today took advantage of a local and international favourable opportunity and went about making some of the Islamic provinces join to it by way of Qitaal?

363)	<p>The situations of Qitaal in the future that is hoped for:</p> <p>What if the Islamic State returned into existence in the future and then it worked to make the provinces of the Islamic lands join to it by way of force in the case where peaceful means have failed?</p>
365)	<p>The third issue: Is Qitaal for the purpose of unifying the Islamic lands considered Jihaad according to its Istilaahi (technical) meaning?</p>

Chapter Two

The Mashroo'iyah (legality/legitimacy) of Al-Jihaad

371)	SECTION ONE The stage before Al-Jihaad: 'The Islamic Da'wah in the Makkan era before Al-Hijrah'.
371)	Introduction around the topic of the section, its end point and clarification of its connection to the subject of Al-Jihaad.
375)	The first study: The Da'wah of Islam in the secret phase.
377)	Concepts related to the meaning of the Sirr (secret) and Kitmaan (secretiveness).
377)	The first understanding: The secretiveness of the Da'wah, the secretiveness of organisation, secretiveness of those who were affiliated to it and the secretiveness of performing the acts of worship ('Ibaadaat).
379)	The second understanding: The secretiveness of performing the acts of 'Ibaadah only.
380)	The third understanding: The secretiveness of organisation.
382)	That which we view to be strongest in regards to the issue of secretiveness and seeking to conceal in this first phase.
389)	The second study: The Islamic Da'wah in the public phase (phase of announcement).
391)	The secretive stage did not prevent the voice of the Islamic Da'wah to be heard inside Makkah and outside of it.
392)	The wishes and first attempts to transfer the Da'wah to the phase of public announcement and the reasons for this.
393)	The transfer to the public phase did not occur in one single go.
397)	'Umar Ibn Al-Khattaab (ra) accepting Islam after Hamzah Ibn Abdil Mutallib (ra) and the final entering into the phase of revealing (the Da'wah) and its public announcement.
397)	The effects of entering into the stage of revealing and being public.
401)	The third study: The Islamic Da'wah in the phase of presenting it to the leaders of the tribes and the convening of the Bai'ah with the Ansaar upon war.
403)	Introduction around the circumstances that led the Da'wah to seek the Nusrah from outside of Makkah.

406)	The first issue: The presentation of the Islamic Da'wah to the leaders of the tribes was for seeking the Nusrah (support). (The specificities that the Nusrah is distinguished by and seeking it in this phase).
406)	1. Seeking the Nusrah after the increased severity of harm.
407)	2. The presentation of the Messenger صلى الله عليه وسلم himself to the leaders of the tribes and it was a command from Allah 'Azza Wa Jalla.
407)	3. Restriction of the seeking of Nusrah to the leaders of the tribes and those who hold positions of prestige and honour.
407)	4. Belief (Eemaan) in the Da'wah is a condition for the one the Nusrah is accepted from and the difference between personal protection to the one carrying the Da'wah and its acceptance from a disbeliever, and between the Nusrah for the Da'wahj and the necessity of the fulfilment of Eemaan (belief) in the one who provides it.
408)	5. The seeking of the Nusrah is for two matters: Firstly: To protect the conveyance of the Da'wah Secondly: To hand over the reins of ruling and authority upon the basis of the Da'wah.
410)	6. The rejection of giving a power ready to provide the Nusrah any guarantees that there will be anything of the Hukm (rule) and authority for their people as a price for their giving (of the Nusrah).
411)	7. It is stipulated as a condition for accepting the Nusrah from them for them to be capable of standing in the face of the enemies of the Da'wah in the case of the establishment of the state.
412)	8. It is stipulated as a condition for accepting the Nusrah from them that their land is not tied to international covenants that it is not possible to be freed from which are contrary to the Da'wah.
414)	9. The Nusrah was not sought outside of Makkah until hope was lost of achieving it from inside Makkah and the lack of sufficient numbers from amongst the Muslims to take hold of the Hukm (ruling).
416)	The second issue: The convening of the Bai'ah with the Ansaar upon Harb (war).
416)	Introduction about the stages that were passed through between the Messenger of Allah صلى الله عليه وسلم and the Aus and the Khazraj until the accomplishment of the Bai'ah with them upon war (Bai'at-ul-Harb).
416)	1. His صلى الله عليه وسلم's meeting with the leader of Al-Aws – Suwaid Bin As-Saamit.
416)	2. His صلى الله عليه وسلم's meeting with a delegation from Al-Aws under the leadership of Abu Al-Haysar and included Iyaas Bin Mu'aadh.

417)	3. His صلى الله عليه وسلم's meeting with the Khazraji group in the Hajj season after the Harb (war) of Bu'aath.
418)	4. The first pledge of Al-'Aqabah.
418)	5. The second pledge of Al-'Aqabah (Bai'at-ul-Harb).
420)	The first point: What role did the third meeting with the Khazraji group play after the war of Bu'aath as an introduction to the beginning of the Ansaar enetering into Islaam and the first pledge of Al-'Aqabah?
422)	The second point: What was the role of the first pledge of Al-'Aqabah in regards to seeking the Nusrah and working for its accomplishment?
430)	Upon what matter was the second pledge of Al-'Aqabah made upon? And its relationship with the usage of Al-Harb (war) – if it was necessary – to the establishment of the Islamic State and its protection?
431)	Conclusion of the first section: The use of violence (force) and Qitaal in the Islamic Da'wah stage of Makkah Al-Mukarramah in its three phases:
439)	The first point: The hostile position of the Quraish against the one carrying the Da'wah and its men.
441)	The second point: The position of the carrier of the Da'wah and its men in regards to the hostility of the Quraish against them.
441)	a. The position of abstaining from defence.
443)	The fruits resulting from abstaining from defence.
445)	b. The position of defence and responding to the violence with its like.
446)	c. The position of deterrence
447)	The third point: The Shar'iyah Adillah (evidences) that have organised the relationships between the Muslims and the Mushrikeen before the Hijrah in relation to the issue of violence and fighting.
451)	SECTION TWO The stage after the legislating of Al-Jihaad: "The Islaamic Da'wah in the Madani period" after the Hijrah.
453)	The first Study: The permission to fight (Al-Qitaal).
455)	Introduction around that which this study includes within it.
455)	The first point: The situation of the Muslims before the permission to fight was given and what the prevention of fighting before the giving of its permission indicates, and the evidences that made the Muslims refrain from fighting the Kuffaar who persecuted and tortured them.

460)	The second point: When did the permission to fight occur? The evidences for the permission to fight and what is intended by the fighting that had been permitted? And what is intended with the permission issued in regards to Qitaal (fighting)?
467)	The second study: A summarised presentation of the wars, and their ending by treaties from the Prophetic Seerah and the most significant Ahkaam that can be taken from them.
471)	Introduction around that the points that are within this study.
472)	The first point: The situation of the Islamic State at the time of the Prophethoos in relation to its relationships with that which was around it, within the Jazeerah 'Arab (Arabian Peninsula) and outside it.
473)	The Yahood (Jews) and their Muwaada'ah.
475)	Quraish and their declaration of war against the Islamic State in Al-Madeenah.
477)	The Mushrioon in the Jazeerah Al-'Arab and in the surrounding lands.
477)	The second point: The most important events of armed confrontation and treaties (Mu'aahdaat) that were recorded in the Prophetic Seerah, their reasons (causes) and aspects related to the Ahkaam (rulings) that can be taken from them.
478)	1. The first Sariyyah (raiding party) and what can be taken from it.
479)	2. The first Ghazwah (expedition) and what can be taken from it.
479)	3. The attack of Karaz Bin Jaabir Al-Fihriy (The first Badr) and what can be taken from it.
480)	4. The Muwaada'ah of Bani Mudlij and Bani Damrah and what can be learnt from it.
483)	5. The exposure to the caravan of Abu Sufyaan, the battle of Badr and what can be taken from it.
485)	6. Banu Sulaim and Ghatafan declaring war upon Al-Madeenah and what can be taken from this incident.
486)	7. The Yahood (Jews) (Qaynuqaa') breach the treaty.
486)	8. K'ab Bin Al-Ashraf (Al-Yahoodi) breaches the treaty (covenant).
487)	9. The Ghazwah of Uhud and what can be learnt from it.
488)	10. Banu Asad Bin Khuzaimah declare war upon Al-Madeenah.

489)	11. Hudhail declare war upon Al-Madeenah.
489)	12. The tragedy of Ar-Rajee' followed by the tragedy of Bi'r Ma'oonah.
489)	13. Yahood (Bani Nadeer) breach the treaty ('Ahd).
489)	14. Dooamat-ul-Jandal declare war upon Al-Madeenah and the Muwaada'ah of Fazaarah.
490)	15. The Ghazwah of Banu Al-Mustalaq and its cause.
491)	16. The Ghazwah of Al-Khandaq/Trench (Al-Ahzaab/Confederates) and the breaching of the covenant by the Yahood of Quraizah and what can be taken from this. And the announcement of the changing of the war policy of the Islamic State from being defensive (Difaa'iy) to being offensive (Hujoomi) and the reasons (causes) of this.
497)	17. The Sul'h of Al-Hudaybiyyah and the purpose of convening it.
498)	18. The Ghazwah of Khaibar and its cause.
499)	19. Saraayaa (armed raids) after the Ghazwah of Khaibar.
500)	20. Ghazwah of Mu'tah and its cause/reason.
500)	21. The Ghazwah Dhaata-s-Salaasil and its cause/reason.
500)	22. The breaching of the Sulh of Al-Hudaybiyyah by the Quraish and the Fat'h (conquest) of Makkah.
500)	23. Ghawah of Hunain and its cause/reason.
501)	24. The Ghazwah of Tabook, its causes and treaties with some of the forces in the North. The Islaam of Farwah Al-Judhaami the governor of Ma'aan for the Romans and his being killed at their hands.
502)	25. The Islaam of Thaqeef in At-Taa'if and the revelation of the beginning of Soorah Baraa'ah (At-Taubah).
505)	The incorporation of Al-Yaman (Yemen) into the Islamic State.
506)	The Romans and the command of the Messenger of Allah صلى الله عليه وسلم before his death to send the army of Usaamah to the Wilaayah (province) of Ash-Shaam (Greater Syria) which was under the authority of the Roman State.
506)	The second point: A presentation of some of the statements of the A'immah (Imaams) and recent Islamic writers in regards to the reasons of the warfare conducted by the Nabi صلى الله عليه وسلم and whether they were defensive or offensive?
506)	The opinions of the Qudamaa' (classical scholars):

	First: The opinion of Ibn Taymiyyah: For the defensive.
507)	Second: The opinion of Ibn Katheer: And for the offensive as well.
509)	The opinions of the recent writers/scholars: Ash-Shaikh Muhammad Al-Ghazaali and some writers and Islamic thinkers including Ash-Shaikh Taqiyu-d-Deen An-Nabhaani.
511)	Some of the statements of from those are recent in regards to the battles of the Nabi صلى الله عليه وسلم being for defence (i.e. defensive).
511)	1) Ash-Shaikh Muhammad Shaltoot
511)	2) Doctor Wahbah Az-Zuhailiy
511)	3) 'Umar Ahmad Al-Farjaani
511)	Statements of those from recent times who said that his battles were limited to the status of being defensive.
511)	Doctor Muhammad 'Ali Hasan.
512)	Doctor Muhammad Sa'eed Ramadhaan Al-Booti.
513)	The Army Officer, Doctor Yaaseen Suwaid.
514)	The fourth point: What I view in regards to the issue of the reasons (causes) for his صلى الله عليه وسلم's battles.
514)	Restricting the study of his صلى الله عليه وسلم's battles. What were its causes (reasons)? Without examining the subject of Al-Jihaad, in a general manner. What was the reason for this?
515)	1. The raiding parties and expeditions against Quraish and what related to them – Defensive and offensive with both considerations.
516)	2. The Ghazwah of Badr and the convergence of the wills of both parties to engage in the Qitaal (fighting).
517)	3. The Ghazwah of Uhud and Al-Khandaq and their cause: Defensive.
518)	4. The Ghazwah of Quraizhah and its cause: Breaching of 'Ahd (treaty/covenant).
518)	5. Ghazwah of Khaibar and its reason: Offensive defence or defensive offense.
518)	6. Ghazawaat (expeditions) and Saraayaa (raids) against other than Quraish; its reason was Difaa'i Hujoomi (Offensive defence).

518)	7. Fat'hu Makkah and its reason: Breaching of the 'Ahd (treaty/covenant).
518)	8. Ghazwah of Mu'tah and then Tabook followed by the command for the army of Usaamah Bin Zaid to Ash-Shaam. The reason for all of this was: Ad-Difaa'i Al-Hujoomi (Attacking defence).
519)	9. Warning to the transgressing (aggressing) Mushrikeen after the revelation of Soorah Baraa'ah. Its reason: Breaching of the 'Ahd.
520)	10. Not renewing the 'Ahd (covenant/treaty) with the transgressing Mushrikeen. Its reason: The necessity of clearing the base of Islam (stronghold) in the Jazeerat-ul-'Arab from the permanent presence of non-Muslims.
524)	America uses force to abolish the worship of mankind and Islaam according to the opinion of the Jumhoor (majority) is to use force to abolish the worshipping of stones.
525)	The third study: The invitation of the Messenger of Allah صلى الله عليه وسلم to the leaders of the sates to Islaam and its relationship with Al-Jihaad.
525)	The first issue: The reason the Nabi صلى الله عليه وسلم dispatched the messengers to the kings and leaders (heads of state).
528)	The second issue: Shubuhaat (questions/doubts) that have arisen around the issue of the Sihhah (correctness) of the Nabi صلى الله عليه وسلم sending letters to the Mulook (kings) and Umaraa (rulers) and a rebuttal of these doubts and a confirmation of what is Saheeh in regards to those letters.
536)	The third issue: What did the letters to the kings and heads of state from the Nabi صلى الله عليه وسلم carry in terms of what they contained of implications and the relationship of that with Al-Jihaad in the way of Allah.
541)	The fourth study: The motives for declaring Al-Jihaad upon all fronts in the time of the Khilaafah Ar-Raashidah.
543)	Introduction around the issues of the study.
544)	The first issue: Historical examples of the Jihaad of the Sahaabah in the time of the Raashideen and what was behind these in terms of the reasons that drove them.
544)	1. The Persian front.
550)	2. The roman front.
552)	3. The Egyptian front.
555)	4. The North Africa front.
556)	5. The Cyprus front.

557)	The second issue: What has been said in regards to the motives/factors for declaring Al-Jihaad upon all fronts in the time of the Raashideen according to the Islamic writers?
558)	The motives/factors according to General Muhammad Faraj.
558)	The motives/factors according to 'Umar Ridaa Kahhaalalah.
559)	The motives/factors according to Ash-Sheikh 'Ali At-Tantawi.
559)	The motives/factors according to Doctor Wahbah Az-Zuhailiy.
559)	A summary of that which was mentioned by the Islamic writers, 1) The economic motive. 2) The political motive. 3) The reality motive, defensive. 4) The human motive. 5) The liberation motive. 6) The Deeni (religious) motive.
561)	The third issue: Our opinion around the motives for declaring Al-Jihaad in the time of the Raashideen from the reality of what came from official statements, what came from negotiations and what was convened in terms of treaties with the opposing states.
561)	Three truths (realities) for judging the motives mentioned above upon their bases.
561)	1. The first truth (reality): The three choices given before the declaration of Al-Jihaad is a Daleel that the main motive for it was: The Islamic Da'wah.
561)	2. The second truth (reality): The difference between something being a motive for something and between benefiting from that matter to achieve other (additional) purposes.
564)	3. The third truth (reality): The motive behind any activity performed by the state is only the main goal that the state behind it is calling for. The activity and not the purposes that some of those who use the state for that envisage.
564)	1. Discussing the economic motive.
565)	2. Discussing the political motive.
567)	3. Discussing the reality (defensive) motive.
576)	4. Discussing the human motive.
576)	5. Discussing the liberation motive.
578)	Our summary of the discussion of the above mentioned motives is that the foremost and true motive behind the movement of Al-Jihaad in the

	time of the Raashideen was only the motive of carrying the Islamic Da'wah... which led to other results that we have brought out from the preceding discussions.
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Chapter Three

The reasons for declaring Al-Jihaad in Al-Islam.

583)	Introduction to the chapter.
583)	Firstly: Why did we deal with the subject (Mas'alah) of: 'Al-Qitaal and its reasons' in the time of the Prophethood and the Raashideen in the previous chapter before dealing with it from the angle of the Shar'iah Nusoos (texts) as will be dealt with in this chapter?
585)	Secondly: The manner of the Islamic writers in regards to dealing with the subject: The reasons for Al-Qitaal in Al-Islam.
586)	Thirdly: The reasons for Al-Qitaal in Al-Islam according to the Islamic writers (Transmitting some of their statements in relation to this subject).
586)	1. Ash-Sheikh 'Abdul Wahhaab Khallaaf.
586)	2. Ash-Sheikh Mahmood Shiltoon.
586)	3. Doctor Muhammad 'Abdullah Diraz.
587)	4. Ash-Sheikh Muhammad Abu Zahrah.
587)	5. The consultant 'Ali 'Ali Mansoor.
587)	6. Muhammad Faraj.
588)	7. Muhammad 'Izzah Darwazah.
588)	8. The commander of armed forces Mahmood Shait Khattaab.
588)	9. Doctor Hasan Ibraaheem Hasan and his brother Doctor 'Ali.
588)	10. Doctor Mustafaa As-Sabaa'iy.
589)	11. As-Sayyid As-Saabiq.
589)	12. Doctor Ahmad Ash-Shalbiy.
590)	13. Doctor Hussein Al-Haaj Hussein.
590)	14. 'Abdul Hameed Bakheet.
590)	15. Doctor Wahbah Az-Zuhailiy.
591)	16. 'Umar Ahmad Al-Farjaaniy.
591)	17. Doctor Mustafaa Ar-Rifaa'iy.

592)	18. 'Uthmaan Ad-Dameeriyah.
592)	19. Doctor Ihsaan Al-Hindiyy.
593)	20. Sayyid Qutb.
593)	21. The Commander 'Afeef Al-Bazariyy.
593)	22. Doctor 'Abdul Kareem Zeedaan.
594)	23. Ash-Sheikh Naasir Ad-Deen Al-Albaaniyy.
594)	24. Doctor Diyaa Ad-Deen Zinkiy.
594)	25. Doctor 'Aarif Khaleel Abu 'Eid.
595)	26. Abu-l-A'ala Al-Mawdoodiy.
596)	27. The point of view of the majority of the people of Islamic Fiqh as summarised by Ash-Shawkaani.
596)	28. Doctor Haamid Sultaan.
597)	Fourthly: Deductions and observations around the preceding stated views.
597)	1. All of the writers: The 'Udwaan (aggression/hostility) against the Muslims is a reason from amongst the reasons for the declaration of Al-Jihaad.
597)	2. Many of the writers: The aggression upon the Ahl-udh-Dhimmah is like the aggression upon Muslims.
597)	3. Some of the writers: The aggression or oppression (Zhulm) that falls upon non-Muslims, from those who have alliances (Hulafaa) but are not from the Ahl-udh-Dhimmah is considered a reason from amongst the reasons of Al-Qitaal in Islaam.
597)	4. Some of the writers: The aggression or oppression (Zhulm) that falls upon non-Muslims who are neither from the Ahl-udh-Dhimmah or the Hulafaa (those who have alliances) is considered a reason from amongst the reasons of Al-Qitaal.
598)	5. Many of the writers: The Qitaal for the sake of carrying the Da'wah and the protection of its spreading is restricted to the case of aggression befalling the carriers of the Da'wah or those who have responded to it or in the situation where the invitation of non-Muslims to Islaam has been prevented.
598)	6. A small number of the writers: Al-Qitaal is legitimate for the purpose of unifying (incorporating) non-Islaamic states to the Islamic State and to implement the Islamic System over them.

598)	7. Some of the writers: Modern means of communication, from it the legitimacy of Al-Qitaal is cancelled for the purpose of spreading the Islamic Da'wah, when it is permitted to enter into the lands which are not Islamic.
599)	8. Some of the writers: Manifestation of differences in regards to their expressions in terms of specifying the legitimate causes of Al-Qitaal in Islaam.
599)	Example: Doctor 'Aarif Abu Khaleel.
599)	Example: From outside those quoted earlier: Abdul Haafizh Abd Rabbah
602)	Third example: From those quoted from earlier: Doctor Yaseen Suwaid.
605)	SECTION ONE Repelling the hostility/aggression ('Udwaan).
607)	Introduction: The 'Udwaan (aggression) against the Muslims is the first reason (cause) for the WujooB (obligation) of the declaration of Al-Jihaad in legislative history.
609)	The first study: The aggression in terms of it becing a Sabab (reason/cause) from amongst the Asbaab (reasons) for the Qitaal in Al-Islaam
609)	The first issue: What is the Madlool (significance) of the aggression against the Muslims?
612)	The second issue: The Shar'iyah Adillah for the legality of Al-Qitaal for repelling the aggression.
613)	The third issue: About the 'Aamm (general) and the Khaass (specific), the Mutlaq (absolute/unrestricted) and Muqayyid (restricted) and the Naasikh (abrogating) and Mansookh (abrogated) in regards to the texts about Al-Qitaal.
615)	a. The specific (khaass) texts of Al-Qitaal and the general ('Aamm) and is there within them An-Naasikh and Mansookh.
617)	b. The Muqayyid (restricted) texts of Al-Qitaal and the Mutlaqah (unrestricted). Is the Mutlaq carried (understood) upon the Muqayyid?
617)	What is intended by Al-'Umoom (generalness) and lTlaaq (being unrestricted): The legitimacy (Mashroo'iyah) of fighting the Kuffaar and even if they have not aggressed against the Muslims. And what is intended by the Takhsees (specifying) and the Taqyeed (being restricted): The Mashroo'iyah (legitimacy) of fighting the Kuffaar on the condition that they have aggressed against the Muslims.
619)	The opinion that says that the Mutlaq is carried upon the Muqayyid in regards to the Nusoos (texts) of Al-Qitaal.

619)	Ash-Sheikh Abdul Wahhaab Khallaaf and his opinion in relation to the Mutlaq being carried upon the Muqayyid.
621)	The opinion that states that the Mutlaq is not carried upon the Muqayyid in regards to the Nusoos (texts) of Al-Qitaal.
621)	Ash-Sheikh Taqi Ad-Deen An-Nabhaani and his opinion that the Mutlaq is not carried upon the Muqayyid.
622)	The opinion that we have outweighed as strongest in regards to this Mas'alah (issue).
626)	The fourth issue: Justifications of Al-Qitaal against the aggression, between Jazaa' (recompense) and defence.
626)	a) The Jazaa (recompense) upon the aggression that occurs.
627)	b) The defending against the aggression that befalls.
628)	c) The defending against the expected aggression.
631)	The second study: The aggression against the Muslims in terms of its form. Meaning the direction upon which the aggression fell.
631)	The first issue: Occupation of a part of the Islaamic lands for any purpose intended.
632)	1. The meaning of the occupation of a part of the Islaamic lands.
632)	2. What is the intent of the enemy in occupying any land or region from amongst the Islaamic lands.
636)	3. What is the Hukm Ash-Shar'iyy in the situation of the occupation of any part of the Islaamic lands?
639)	The second issue: The aggression against individual Muslims (Ashkaas) for any purpose intended.
639)	1. What do we mean by aggression against individual Muslims?
640)	2. What are the aims of the enemy for aggressing against individual Muslims?
641)	3. What is the Hukm Ash-Shar'i in the situation of aggression against Muslim individuals?
641)	The third issue: The aggression against the honour of the Muslims and the Hukm Ash-Shar'iyy in regards to that.
641)	What do we mean by aggression against the honour of the Muslims?

643)	Declaration of war against the Jews of Bani Qaynuqaa' and their expulsion due to their aggression against the honour of the Muslims.
644)	The delegation of the killing of the Jew Ka'b Bin Al-Asraf because of his aggression against the honour of the Muslims.
645)	Modern forms of aggression against the honour of the Muslims by other states: The forcing of Muslim women to discard the Shar'iy Hijaab.
645)	The spreading by the media in any form that have taken to offending the honour of Muslims in the present or the past.
646)	The fourth issue: Aggression against the property of Muslims.
646)	The Mashroo'iyah (legality/legitimacy) of fighting the enemy because of his aggression against the private or public properties of the Muslims or that which the state owns.
646)	The Nabi delegated Zaid Bin Haarithah to discipline those aggressing upon Dihyah Al-Kalbi in regards to the looting of the property they had.
646)	The raid/attack upon the Liqaah of the Nabi صلى الله عليه وسلم in the Ghaabah (forest/wilderness) and his setting out to fight the Mugheereen.
649)	The third study: The aggression against the Muslims in terms of citizenship that those in Daar-ul-Islaam or Daar-ul-Kufr hold.
651)	Introduction around the issues of this study.
652)	The first issue: The specific Shar'iyah evidences for fighting against the aggression that falls upon the Muslims who are not from the people of Daar-ul-Islaam.
659)	The second issue: What is Daar-ul-Islaam? And what is Daar-ul-Kufr or Daar-ul-Harb?
660)	The first point: What makes Daar-ul-Islaam and what makes Daar-ul-Kufr?
660)	Daar-ul-Islaam, Daar-ul-Kufr and Daar-ul-Harb are Shar'iy terminologies which are found in the classical texts in the heart of Islaam.
662)	Firstly: Some of what has been said about the issue of Daar-ul-Islaam and Daar-ul-Kufr.
662)	1. What was mentioned in 'Badaa'i' As-Sanaa'i'
663)	2. And in 'Haashiyah' of Ibn 'Aabideen.
663)	3. And what was said by Ash-Shaikh Muhammad Abu Zahrah.

663)	4. And in Islaamic articles from Al-Ash'ariyyah.
663)	5. And in the 'Qamoos (dictionary) Al-Fiqhiy.
664)	6. And in 'As-Saif Al-Battaar'.
664)	7. And in Al-Mughni Al-Muhtaaj'.
664)	8. And in 'As-Sail Al-Jarraar' of Ash-Shawkaani.
665)	9. The opinions mentioned by As-San'aani.
666)	10. Abdul Qaadir 'Audah.
666)	11. Ash-Sheikh Abdul Wahhaab Khallaaf.
666)	12. Ash-Sheikh Taqi Ud-Deen An-Nabhaani.
667)	13. Doctor Wahbah Az-Zuhailiy.
667)	14. Doctor Muhammad Sa'eed Ramadhaan Al-Booti.
667)	15. Doctor 'Abdul Kareem Zidaan.
668)	The confusion/bewilderment of Siddeeq Bin Hasan Al-Qanoojy in this Mas'alah.
669)	Secondly: The chosen opinion that we have outweighed to be strongest in this Mas'alah.
675)	The second point: Who are the Muslims who are affiliated to Daar-ul-Islaam and those affiliated to Daar-ul-Kufr or Daar-ul-Harb?
676)	The third point: What is the Hukm of defending Daar-ul-Islaam? And defending the people of Daar-ul-Islaam?
677)	The fourth point: The Islaamic lands – if there is no Daar-ul-Islaam from the perspective of the terminology – what is the Hukm about defending them and those affiliated to them?
677)	The categories of lands with regard to the considerations of: Its rule (Hukm), its security (Amn), its possession in the present or past: are: 1) Daar-ul-Islaam 2) Daar-ul-Kufr 3) And Islaamic lands that are not Daar-ul-Islaam from the perspective of terminology/classification.
678)	The Wujoob (obligation) of defending Islaamic lands or returning there authority to the Muslims and even if it isn't Daar-ul-Islaam.

679)	Our discussion of the opinion of Doctor Muhammad Sa'eed Ramadhaan Al-Booti in relation to this point.
681)	The obligation of defending Muslims in the Islamic lands and even if it is not Daar-ul-Islam.
681)	The fifth point: Daar-ul-Kufr which is the lands of the Kuffaar – What is the Hukm of defending Muslims who are settled in them?
682)	The obligation of defending these Muslims with the conditions: 1) That they ask for help 2) That they request it for a legitimate reason/cause 3) That the aggressing Kuffaar are not in a treaty of peace with the Muslims in Daar-ul-Islam 4) If the Maslahah (interest) of leaving them is stronger than the Maslahah of giving them support.
685)	The Muslims from other than Daar-ul-Islam – Is it obligatory upon them to defend other Muslims?
686)	The sixth point: If the Muslims abandon or are incapable of supporting their brothers who are settled in Daar-ul-Kufr, is it then obligatory for them to make Hijrah from those lands?
687)	The third issue: What is the Hukm of Hijrah from Daar-ul-Kufr to Daar-ul-Islam or the other way round?
687)	1. The Hijrah is Fard and leaving it is Haraam – in circumstances.
690)	2. The Hijrah is Mandoobah, Mustahabbah and is not Waajib – in certain circumstances.
690)	3. The falling of the obligation and recommendation – in certain circumstances.
691)	4. The Istihbaab (recommendation) of residing in Daar-ul-Kufr – in certain circumstances.
691)	5. The Tahreem (prohibition) of making Hijrah from Daar-ul-Kufr and the obligation to remain in it – in certain circumstances.
693)	The fourth study: Aggression upon Ahl-udh-Dhimmah, who takes its Hukm, and upon the allies (hulafaa) of the Muslims from other than the Ahl-udh-Dhimmah. It is aggression against the Muslims.
695)	Introduction about that which this study includes.
696)	The first issue: The aggression against the Ahlu-dh-Dhimmah and those who are deal with in the same way as they are.
696)	The first point: Defending the Ahlu-dh-Dhimmah absolutely in Daar-ul-Islam or in other than Daar-ul-Islam.

700)	The second point: Defending the Mustamineen is Daar-ul-Islaam against external aggression against them.
701)	The third point: Defending the subjects of the countries of covenant (Mu'aahadah) if they are located in Daar-ul-Islaam against external (foreign) aggression against them.
702)	The second issue: Aggression against the Hulafaa (allies) of the Muslims from other lands and their subjects from those who have entered under the protection of the Islamic State.
709)	The Fifth Study: Is the aggression or oppression that occurs upon groups from the Kuffaar, other than the Ahlu-dh-Dhimmah and those who follow their ruling, and other than the Hulafaa (allies), a reason (cause) for Al-Qitaal in Al-Islaam?
711)	Introduction summarizing by definition the factions (Tawaa'if) to which aggression against them is considered a reason from amongst the reasons for Al-Qitaal in Al-Islaam, followed by defining the issues of this study.
713)	The first Issue: The position of the Islaamic writers in relation to the subject of the study.
713)	1. From amongst them are those who neglected to mention this issue.
713)	2. From them are those who spoke in general terms.
713)	3. From them are those who supported the defence of those who are oppressed in a general way and in another place restricted the defence to the Hulafaa (allies).
714)	4. From them are those whose expression was closer to supporting the interference in the affairs of other states to give Nusrah (support) to the oppressed from amongst its peoples.
715)	5. From them are those who expressed the legality of this interference.
718)	The second Issue: The Adillah (evidences) of those who state the interference in the affairs of others to lift the oppression from those who are oppressed with a discussion about this.
718)	Adillah: 1. His صلى الله عليه وسلم's approval of Hilf ul-Fudool. 2. His صلى الله عليه وسلم's support to Khuzaa'ah against Quraish. 3. The statement of Allah سبحانه وتعالى: <i>"And what is wrong with you that you fight not in the Cause of Allah, and for those weak, ill-treated and oppressed among men, women,</i>

	<p><i>and children, whose cry is: "Our Lord! Rescue us from this town whose people are oppressors; and raise for us from you one who will protect, and raise for us from you one who will help."</i> (An-Nisaa, 4:75)</p> <p>4. The legitimacy of interference according to the modern international 'Urf (custom) in defence of humanity in the case of the repression of a state upon minorities from amongst its subjects.</p> <p>5. The opening of the Sahaabah of Misr (Egypt) because it was under the oppression of the Roman tyrants.</p>
719)	Elaborating upon the Adillah and a discussion about them.
719)	1. A discussion of the evidence: Hilf ul-Fudool.
722)	2. A discussion of the evidence: Supporting Khuzaa'ah against Quraish.
722)	3. A discussion of the evidence: "And what is wrong with you that you fight not in the Cause of Allah..."
723)	4. A discussion of the evidence: The legitimacy to interfere according to the current international custom ('Urf).
723)	5. A discussion of the evidence: The conquest of Egypt by the Sahaabah.
724)	The third issue: The opinion that we believe to be strongest in this Mas'alah.
729)	Some cases that the Islamic State interferes and does not interfere in relation to defending peoples and other states.
733)	Al-Qitaal is legitimate for the purpose of removing the Zhulm from other peoples however it is not an independent Sabab (cause/reason) from amongst the Asbaab (reasons) for Al-Qitaal in Al-Islaam. Just as Al-Qitaal is legitimate for the purpose of removing some deviant laws from other states like the permissibility to perform Zinaa or practise Ribaa however it is not an independent Sabab from amongst the Asbaab for Al-Qitaal in Al-Islaam.
739)	SECTION TWO Standing in the face of the Islaamic Da'wah.
741)	Introduction about the studies that this section includes.
743)	The first Study: What is the intended meaning of: 'Standing in the face of the Da'wah' in its description as a Sabab (reason) for the legality of Al-Jihaad in Al-Islaam?
743)	The first issue: The meaning of 'Standing in the face of the Da'wah'.
743)	According to some Islamic writers: Standing in the face of the Da'wah is only realised in the situation of the prevention of those carrying the Islamic

	Da'wah from conveying Islaam.
743)	According to others: Standing i the face of the Da'wah is only realised in the situation of the refusal of the authority to submit to the Muslims and the refusal to submit to the system that the Islamic Da'wah carries and even if the conveyance of the Da'wah has been allowed.
744)	Amongst those who have said the first of these two statements are: Ash-Shaikh 'Abdul Wahaab Khallaaf.
744)	Ash-Shaikh Sayyid Saabiq
745)	Ash-Shaikh Abdullah Bin Zaid Bin Aali Mahmood.
745)	And from amongst those who hold the second opinion: Ash-Shaikh Naasir Ad-Deen Al-Albaani
746)	Ash-Shaikh Taqi ud-Deen An-Nabhaani
746)	Doctor 'Abdul Kareem Zidaan
748)	The second issue: The evidences of the two above groups in regards to what is intended by standing in the face of the Da'wah.
748)	Firstly: The Adillah (evidences) of the first group.
752)	Secondly: The Adillah of the second group.
755)	The third issue: Discussing the Adillah and the opinion that we choose based on the strongest evidences.
765)	The majority of the Fuqahaa including Ibn Taymiyyah and Ibn ul-Qayyim hold the second meaning as their opinion in relation to what is intended by standing in the face of the Da'wah.
766)	A discussion of what Ash-Shaikh Muhammad Abu Zahrah attributed to Al-Imaam Ibn Taymiyyah.
768)	A discussion of what Doctor Wahbah Az-Zuhailiy attributed to Al-Imaam Ibn ul-Qayyim.
771)	The second study: What are the non-Muslims in other states (lands) invited to?
771)	The first issue: The Da'wah that is directed to the Kuffaar. What is it?
772)	The Da'wah to embrace Islaam.
776)	The Da'wah to give the Jizyah meaning the acceptance of the ruling by Islaam.

779)	The second issue: What is the Hukm for the Da'wah of the Kuffaar (disbelievers) to Islaam or to submit to the ruling of Islaam before Al-Qitaal?
779)	The Madhaahib of Islaam in relation to the Hukm (legal ruling) of this Mas'alah with the evidences they relied upon.
787)	The opinion that we believe to be strongest – It is detailed in accordance to the circumstances.
789)	Is the extensive mention of Islaam in the world considered as conveyance of the Da'wah or is it necessary for there to be an official conveyance?
789)	I see that it is necessary for there to be an official conveyance due to a number of considerations.
793)	The third study: The position of other states and peoples in relation to the Da'wah to Islaam or to the Hukm (ruling) of Islaam and the results that come from this and the legitimacy of Al-Jihaad.
794)	The first issue: The acceptance of embracing Islaam.
794)	The first point: The embracing of the people from the authority of Islaam openly and their ability to hold onto their authority and protecting their land from foreign aggression.
794)	Example: The Haakim (ruler) of Al-Bahrain in the time of the prophethood.
796)	The second point: The embracing of the people of authority or some of them of Islaam and their inability to hold on to their authority upon the basis of Islaam.
796)	To apparent cases of this in the Prophetic Seerah.
796)	The case of the ruler Ma'aan from the land of Ash-Shaam which was subservient to the Roman state.
797)	The case of the King of Al-Habashah (An-Najaashi).
797)	The Najaashi who embraced Islaam said to the messenger of the Nabi صلى الله عليه وسلم: My supporters from the people of Habashah are few so wait for me to increase the supporters and soften the hearts...!
798)	Our analysis of the case of the ruler Ma'aan and the case of the king of Al-Habashah and is it possible to apply these two cases upon those who respond to Islaam from amongst the people in authority today?
801)	The third point: The embracing of Islaam by the authority or the people of some of the regions and their inability to protect their land from the neighbouring enemy or from the state that they have separated (split) from.

801)	The Islamic State has two choices to deal with situation according to the Maslahah. It can either provide the lands with Islamic power to protect them or it can give Naseehah (advice) to the people of the lands to make Hijrah from them to Daar-ul-Islaam without forcing this upon them.
804)	The second issue: The acceptance to enter into the Dhimmah (protection) of the Muslims.
804)	Differences in the land or between the people in regards to responding to accept to enter in to the Dhimmah and following on from this the differing in regards to joining (their land) to the lands of Islamic State or to not join them.
806)	The third issue: The convening of a Mu'aahadah (treaty) of Salaam (peace) between the Kuffaar and the Muslims.
806)	Mu'aahadaat (treaties) with the Kuffaar are legitimate (Mashroo'ah) according to the Maslahah (interest) and they are not from the original choices that are presented to them i.e. (entering) Al-Islaam or entering into the Dhimmah or Harb (war).
807)	Al-Jassaas (the Scholar): We do not know of one from amongst the Fuqahaa who prohibits the Qitaal of the one who has been secluded from our fighting from amongst the Mushrikeen but rather the difference is only in regards to the permissibility of abandon the Qitaal with them, not in its being prohibited!
807)	Ibn Katheer: If the enemy is dense (large/strong) then it is permitted to make a treaty with them.
807)	Az-Zamakhshariy: The issue rests upon what the Imaam sees as being in the interest of Islaam and its people in terms of making war or peace.
807)	Ibn Hajar: The issue of the Sulh (treaty) is restricted to that which is more beneficial to Islaam – The Maslahah.
808)	Ibn Taymiyyah: Al-Hudnah (Truce), it is allowed to convene it Mutlaqan (absolutely without restriction) and Mu'aqqatan (temporarily). And the temporary is binding upon both parties whereas the Mutlaq is a permissible (no-binding) 'Aqd (contract/agreement) and the Imaam acts in it according to the Maslahah.
808)	From the Prophetic Seerah: The story of Abu Baraa, (Malaa'ib Al-Asinnah) and what this guides to.
809)	Mu'aahadaat As-Silmiyyah (Peace treaties) and the condition of the permission for the Da'wah to Islaam.
810)	Mu'aahadaat As-Silmiyyah and the condition of the prevention of the Da'wah to Islaam.
811)	The implication of the rebellion of Abu Busair and his group (rah) against the Quraish during the period of the Sulh of Al-Hudaybiyyah.

811)	Explanation of the speech of Az-Zuhriy: In the time of the Hudnah there was one rational person who was spoken to about Islaam except that he entered into it.
812)	The fourth issue: Rejection of Islaam and the refusal to submit to the rule of Islaam and the legitimacy of declaring Al-Jihaad.
812)	The time period that is granted to states and peoples in order for them to define their position in regards to the Da'wah (invitation) to Al-Islaam or the acceptance of the rule of Islaam is left to the one possessing the authority according to the Maslahah and the legitimacy of Al-Qitaal after the time has period ended.
814)	Various issues related to the Asbaab (reasons/causes) of declaring Al-Jihaad.
815)	The first issue: Al-Jihaad: Is it a defensive war only or can it also be an offensive war?
818)	The second issue: Al-Jihaad: Is it an interference in the affairs of others?
821)	The third issue: What is the origin in the relationship between the Islamic State and the other states? Is it the relationship of peace or the relationship of war?
821)	The majority: The relationship is one of war.
821)	Some of the modern writers: The relationship is one of peace.
826)	Our view in regards to this issue is details based on the following:
826)	1. The origin in regards to the relationship with other states before the conveyance of the Da'wah to them in a clear and official manner is peace and not war.
826)	2. And the Asl (origin) of the relationship after the conveyance of the Da'wah and its rejection to enter into obedience to the Muslims is Harb (war) and not peace.
827)	3. The origin of the relationship with states that have treaties is peace.
827)	4. The origin of the relationship with aggressing nations and even if they are with a treaty is war.
829)	The vague manner in which the Islamic writers have addressed the issue of the relationship between the Islamic State and the other states without explaining the above mentioned differing circumstances leads to confusion.

Chapter Four

Ahkaam Al-Jihaad

833)	SECTION ONE The detailing of the Ahkaam of Al-Jihaad as has come in the books of Islamic Fiqh.
835)	Introduction: The standing of Al-Jihaad and its merit in Al-Islam.
835)	The first point: The Qur'aanic Aayaat that explain the merit of Al-Jihaad and its standing.
837)	The second point: Prophetic Ahaadeeth that explain the merit of Al-Jihaad and its standing.
842)	The third point: Fiqhi Nusooos (texts) in relation to explaining the position of Al-Jihaad Fee Sabeelillah (in the path of Allah).
844)	The fourth point: Reconciliation between the Shar'iyah texts that make Al-Jihaad Fee Sabeelillah carry more merit than other acts sometimes and at other times others are given greater merit.
855)	The first study – Al-Jihaad: The origin in regards to it, is that it is a Fard Kifaayah (Obligation of sufficiency).
855)	The first point: What is Fard Al-Kifaayah?
857)	The second point: Those who say that Al-Jihaad is a Fard Kifaayah are the majority of the Fuqahaa and a mention of their evidences.
862)	The third point: When is Al-Jihaad a Dard Kifaayah? Or what are the conditions in which Al-Jihaad is a Fard Kifaayah.
864)	The fourth point: What is the minimum that leads to the (fulfilment of) the Fard of Al-Kifaayah in relation to Al-Jihaad?
864)	The majority: The obligation (Wujoob) of performing Al-Jihaad once as a minimum in every year.
865)	Doctor Wahbah Az-Zuhailiy contradicts the majority in this issue.
865)	Our opinion in this issue with evidence.
871)	The fifth point: Is the existence of a Khaleefah for the Muslims a condition for the performance of the Fard Al-Kifaa'i of Al-Jihaad for the sake of the Da'wah to Al-Islam?
875)	The second study: Al-Jihaad: When is it a Fard 'Ain?
875)	The first point: What is the Fard Al-'Ain or Al-Waajib Al-'Aini?

876)	The second point: The statements of the 'Ulamaa in regards to Al-Jihaad being a Fard 'Ain in light of the variety in their views with differing considerations in which the Hukm is established for.
877)	Firstly: The opinions of those who say that the Hukm of Al-Jihaad is a Fard 'Ain and takes this Hukm under any framework.
879)	Secondly: Presentation from the texts of the Fuqahaa in regards to these opinions.
880)	The third point: When is Al-Jihaad considered a Fard 'Ain according to the majority of the 'Ulamaa? With the evidences of the occupation of the enemy of a land from amongst the Muslim lands and the aggression upon them or the intention of that.
883)	The appointment of the one in authority of a faction (group) or specific individuals to go out for Al-Jihaad.
886)	The attending of the fighters to the battlefield.
888)	The fourth point: Is the presence of the Khaleefah of the Muslims a condition for the performance of Al-Jihaad which is classified as a Fard 'Ain? And how is this Al-Jihaad performed?
891)	The third study: Al-Jihaad: Is the Asl (origin) of it Mandoob? And can Al-Jihaad be Mandoob in some circumstances?
892)	The first point: What is the Mandoob?
892)	The second point: The idea that states that the Hukm of Al-Jihaad is recommended and not Wujooob (obligatory).
	a. Who stated this from amongst the classical Fuqahaa? And what are their evidences? A discussion of these evidences and directing the opinion that states that Al-Jihaad is Mandoob with that which agrees with the majority who state that the Hukm of Al-Jihaad is a Fard Kifaayah.
901)	b. The attack (offense) alone is the area in which the Hukm of Mandoob is applied to Al-Jihaad according to those of this opinion.
902)	c. What the opinion of the offensive Al-Jihaad being Mandoob dictates according to those of this opinion.
903)	The third point: The modern Islamic writers who state that Al-Jihaad in Al-Islaam is defensive only.
903)	a. What is the truth behind this thought that they are calling to?
905)	b. A comparison between the thought of some of the classical Fuqahaa who said that the Hukm of Al-Jihaad is Mandoob and between those of recent times who have said that Al-Jihaad is defensive only and that it is not permitted to be offensive.

909)	The fourth point: Can Al-Jihaad or fighting the enemies be Mandoob sometimes according to those who do not say that the origin of the Hukm of Al-Jihaad is Mandoob and not Wujoob (obligatory)?
917)	The fourth study: Al-Jihaad: Can it be Mubaah (permissible)?
917)	The first point: What is the Ta'reef (definition) of Al-Mubaah according to the Shar'iy terminology (Istilaah)?
918)	The second point: Can it be possible for Al-Jihaad according to the Hukm Shar'iy in some cases be Ibaahah (Mubaah)?
919)	a. The Qitaal of the enemy for other than raising the word of Allah سبحانه وتعالى the highest and not for purposes of Riyaa (showing off).
922)	b. Some of the cases of fighting – Duelling.
923)	c. Some of the cases of fighting – The enemy's women and their children.
927)	The fifth study: Can Al-Jihaad be Makrooh?
927)	The first point: The Ta'reef (definition) of Al-Makrooh according the Shar'iy terminology.
929)	The second point: Is it possible for Al-Qitaal against the enemy in some circumstances be Makrooh according to the Shar'a.
929)	The third point: A presentation of some of the cases mentioned by the Fuqahaa in which the fighting of the enemy takes the Hukm of being Makrooh according to the Shar'a.
930)	1. The Ghazw (military expedition) without the permission of the Imaam and details about this.
931)	2. The declaration of war against enemy lands which have Muslim subjects that could be afflicted by a strike made by the Muslims with devastating weaponry.
932)	3. Some cases of the fighting by duelling.
933)	4. The pursuit of a Muslim to one of his relatives by lineage from the people of the enemy with details about this.
933)	5. Some of the Fuqahaa: They disliked the attacking at night.
934)	6. If the Maslahah is outweighing then this dictates the cessation of the Qitaal.
937)	The sixth study: Can Al-Jihaad be Haraam?
938)	The first point: What is Al-Haraam according to the Shar'iy Istilaah (terminology)?

939)	The second point: Is it possible for Al-Jihaad or Al-Qitaal against the enemies be Haraam?
939)	The third point: Presentation of some of the circumstances in which the Hukm Shar'i of Al-Jihaad or Al-Qitaal (fighting) against the enemy can transfer from Al-Wujoob (obligation) to AL-Haraam (prohibition).
940)	1. When one or both parents prevent him in the case when it was not Fard 'Ain.
942)	2. If the fighter was in debt and he did not leave someone to vouch for him or someone similar to that and the debtor does not permit him in the case where Al-Jihaad was not Fard 'Ain.
946)	3. When Al-Jihaad leads to a devastating harm afflicting the Muslims.
951)	SECTION TWO The tools of Al-Jihaad: The Islamic army: Its organisation, training and its human and material components.
953)	An introduction to the section.
955)	The first study: The different organisations that the army requires.
955)	The first point: What do we mean by the different organisations that the army requires.
956)	The second point: What is the angle that we are dealing with in regards to these organisations?
961)	The third point: Illustrations of the activities and tasks that these different administrative organisations are tasked to perform.
961)	a. The task of reconnaissance and spying upon the enemy.
963)	b. The task of logistics.
966)	Organisations that modern armies depend upon and its administration and the size or number of individuals that are specified to it differ from army to army according to specific considerations.
967)	Example: The American Army, a quarter of it is designated to fighting whilst the remainder is for actions that are not fighting and as for the Russian army it is almost the opposite.
969)	The second study: The different Tadreebaat (exercises/training) that the army requires?
969)	The first point: What do we mean by the different Tadreebaat that the army requires?

970)	The second point: What is the angle that we deal with from these Tadreebaat?
970)	The performance of exercises is considered from the l'ilaa (raising) that is Waajib Shar'an. The evidences for this are:
971)	Firstly: The statement of Allah سبحانه وتعالى: <i>"And make ready against them all you can of power..."</i> (Al-Anfaal 60)
972)	Secondly: The training (exercises) are the introduction (pre-cursor) for the obligation of Al-Jihaad and 'Maa Laa Yatimmul Waajib Illaa Bihi fahuwa Waajib' (That which the Waajib is not completed except with it, is Waajib).
972)	Thirdly: Being neglectful of or leaving/forgetting the knowledge and experience connected to Al-Jihaad is Haraam: The Hdaeeth: "Whoever learns archery and then leaves it is not from amongst us" and the continuation of training prevents the falling into the Haraam.
974)	The third point: An quick glance at the reliance upon military training in the time of the Prophet صلى الله عليه وسلم.
976)	Reliance upon cavalry or horses.
978)	Reliance upon archery.
981)	Reliance upon engineering corps and the navy.
981)	The fourth point: The benefits that return to the army and the Ummah as a result of the different training exercises which the army requires.
983)	The third study: The human elements.
985)	Introduction about this study.
989)	The first requirement: The individuals of the regular or basic army and their role in the army.
989)	Introduction about the beginnings of the formation of the Islamic army and its organisation.
994)	The first point: Who are the Mukallifoon (legally responsible) with the Wujooob (obligation) of Al-Jihaad.
994)	The conditions of the obligation of Al-Jihaad upon the Mukallifeen (those legally responsible):
994)	1) Al-Islaam 2) Al-Buloogh (pubescent) 3) Al-'Aql (sanity)

	4) Al-Hurriyah (freedom)
1019)	According to the Ahnaaf.
1019)	According to the Maalikiyyah.
1020)	According to the Shaafi'iyyah.
1020)	According to the Hanaabalah.
1020)	According to the aforementioned Madhaahib the woman is not included under the Takleef (legal responsibility) of Al-Jihaad in the case of it being a Fard Kifaayah (obligation of sufficiency).
1021)	The second issue: Does Al-Jihaad become Fard 'Ain upon the woman and when?
1021)	In the Fiqh of the Ahnaaf.
1021)	In the Fiqh of the Maalikiyyah.
1021)	In the Fiqh of the Shaafi'iyyah.
1022)	In the Fiqh of the Hanaabalah.
1022)	Summary: Al-Jihaad in its meaning of Al-Qitaal (fighting) could become Fard 'Ain upon the woman according to the first three mentioned Madhaahib but not according to the Madh'hab of the Hanaabalah.
1022)	The third issue: If Al-Jihaad of the woman is not Fard 'Ain and not Fard Kifaayah then is it permitted for her to carry weapons and engage in Al-Qitaal?
1022)	Yes this is permitted for her according to all of the Madhaahib.
1023)	The third point: Is there a place for the woman in the Jaish An-Nizhaami (the regular army)? Or is her place in the Jaish Al-Ihtiyaati (reserves)? If the need requires that and what is the natural (normal) role that she plays in the army?
1023)	The natural place or position of the woman in the army is within the army reserves and it is permitted for those in authority to open the doors of the regular army to female elements if the Maslahah (interest) calls for that.
1024)	The natural role that she plays in the army is that which fits with her nature like the provision of supplies and medical help and that does not prevent her from occupying places in which she engages in the actions of Al-Qitaal if the need dictates that and it is in the interest.
1024)	Indeed it is Waajib upon her to practise Al-Qitaal in the case where it becomes Fard 'Ain upon her.

1024)	Due to this it is obligatory upon the state to prepare centres for the training of women in which they learn how to use weapons and the matters related to Al-Qitaal so that they can become fully capable of fulfilling this obligation.
1024)	The fourth branch: The Hukm of the participation of children in the army and their role in it.
1025)	The first point: The issue of the accompanying of children of the Islamic army in the time of the Prophet and what is related in regards to it?
1025)	A collection of narrations indicating the going out of the children with the fighting armies and their carrying of weapons.
1029)	The following is indicated by these narrations: 1. The reviewing of the army before launching into battle to examine the physical fitness (suitability) of the fighters and removing those who are not suitable for fighting from amongst those who are Baaligh (mature) and not Baaligh whilst keeping those who possess the capability and even if they were younger than the age of maturity.
1030)	2. The person holding the authority has the right to include or not include those who are young into the army according to the Maslahah.
1030)	3. The one who has not been permitted to go out for Al-Qitaal on the borders of the land could be charged with acts of civil defence within the land.
1030)	4. It could be permitted for the young to go out with the fighters go for Al-Qitaal but not to practise fighting himself. This could be for reasons of providing service or merely for him to witness the events of war if there is a Maslahah in that.
1031)	5. The Nabi صلى الله عليه وسلم giving boys from the booty and even if it was by way of acquiescence, is an evidence for them going out in his time with the fighting army and this is because the origin is that the booty is for the one who attends the events and actualities (of battle).
1032)	The second point: What did the Fuqahaa say in relation to the Hukm of directing the children to fight the enemies?
1032)	According to the Hanafi Fiqh.
1032)	According to the Shaafi'iy Fiqh.
1033)	According to the Maalikiy Fiqh.
1034)	According to the Hanbaliy Fiqh.
1034)	Summary: According to the Ahnaaf and the Shaafi'iyah: The children are charged with Al-Qitaal with a Takleef Ijbaar (compelled) and it is not the same as the Fard 'Ain in the case of the general (public) call to defend the

	<p>land and its people.</p> <p>According to the Maalikiyyah: It is the right of the one in authority to also compel them to go out for Al-Qitaal in other than the situation of the general (public) call, if the Maslahah calls for that.</p> <p>According to the Hanaabalah: They are not compelled to fight at all (absolutely).</p> <p>Whilst it is permissible according to all of them for them to be directed towards Al-Qitaal as long as they are capable of it.</p>
1035)	The third point: Will children be used in the Islamic army in the modern time at the time of its formation? And what is their role in it?
1035)	The natural place for children is the reserve army and it is permitted to utilise them in the regular army if necessity or Maslahah calls for it.
1036)	And one of them is placed in the position that is viable for him within the area of Al-Qitaal or providing of services.
1036)	The fifth branch: The Hukm regarding the subscription of non-Muslims from amongst the states subjects within the army and their role within it.
1037)	The first point: The participation of Kuffaar in the Islamic army going out to fight in the time of the Prophet and the Khulafaa Ar-Raashidoon and what the texts have reported this?
1037)	Firstly: What has been reported in not seeking assistance from non-Muslims in war.
1038)	Secondly: What has been reported in regards to the permission of Kuffaar participating with the Muslims in the war against the enemy.
1038)	How did the 'Ulamaa comment upon all these narrations and what was related about Al-Isti'aanah (seeking assistance) or not seeking it.
1043)	Our view in relation to this Mas'alah is the following:
1043)	1. The rejection of seeking assistance from non-Muslims has been established in war sometimes just as the legitimacy of this assistance has been affirmed.
1043)	2. Working upon the principle of 'working with both evidences' in regards to the rejection of the assistance and its legitimacy is understood means that the issue is left to the one who holds the authority with details to explain this.
1043)	And confirmation that the Nabi صلى الله عليه وسلم has said about a matter: 'Don't do it' and thereafter did it, then this indicates that in this issue is in origin one of Ibaahah (permissibility) in regards to performing it or leaving it according to the Maslahah. This is like his صلى الله عليه وسلم's statement: "I do not seek assistance from a Mushrik" and his صلى الله عليه وسلم's

	statement to a man: "I will not carry for you" and thereafter doing this or his statement: "I do not shake the hand of the women." And then the existence of handshaking in some reports. A discussion about the correctness of this matter.
1046)	The second point: What has been mentioned in the books of Fiqh in regards to the issue of seeking assistance from non-Muslims whilst fighting the enemy?
1046)	In the Hanafi Fiqh.
1046)	The Maaliki Fiqh.
1047)	The Shaafi'i Fiqh.
1048)	The Hanbali Fiqh.
1048)	Summary: The Ahnaaf and Shaafi'iyyah: Permitted the fighting of non-Muslims with Muslims against the enemy and this has also been reported in a narration attributed to Ahmad Bin Hanbal according to Al-Haajjah. As for the Maalikiyyah: They prevent (forbid) the seeking of assistance from non-Muslims in Al-Qitaal however they permit their joining the army that is going out to fight whilst limiting (specifying) their military activity to matters that are not from those of fighting.
1049)	The third point: Is the door opened for non-Muslims from amongst the subjects of the Islamic state to join the regular army? And what is their role if they do join the Muslim army.
1049)	The reserve army is the most suitable place for non-Muslims from amongst the subjects and it is permitted to join them to the regular army in accordance to the limitations that the Islamic Maslahah calls for.
1049)	The one possessing the authority defines the role that the Ahl-udh-Dhimmah play in the army if they join it and whether this is in the areas of fighting or engineering, supply or medical services and spying against the enemy in addition to what resembles this in light of the Islamic Maslahah,
1050)	The sixth branch: Foreigners in the Islamic army and the role within it.
1050)	What is meant by foreigners here, Al-Musta'minoon (those granted security) from amongst the Kuffaar in Daar-ul-Islam who are residing temporarily whether these have been contracted upon certain work or not contracted. And those whom the state has given security from the people of war whilst they are not within Daar-ul-Islam.
1050)	It is permitted to seek the assistance of these in military and fighting affairs amongst others on the basis of contraction and they are not elements in the formation of the Islamic army. They have a right to wages and awards according to the contracts which have been made with them.

1052)	The role of foreigners in regards to their utilisation or his benefit from amongst the benefits of the army is according to what the need calls for, like Al-Qitaal or supply weapons or training elements of the army or in relation to the institutions of the military and its maintenance or related to acts of spying upon the enemy which is for the interest of the Muslims... and what is similar to this.
1055)	The fourth study: The material components of the Islamic army:
1057)	The first requirement: Ways to obtain weaponry.
1057)	The first point: What were the methods to obtain weaponry in the time of the Prophet صلى الله عليه وسلم?
1057)	There were a number of methods for this army which were:
1057)	1. Purchasing of weapons from the domestic and foreign (external) markets.
1060)	2. That which they seized from the enemy.
1061)	3. Contracting with those who own weapons to get what is required from among them.
1062)	4. War (military) manufacturing attached to the Islamic army.
1063)	The second point: What is obligatory upon the Muslims in the current age in regards to the obtainment of weaponry?
1064)	The obligation of Muslims to depend upon domestic manufacturing for their weaponry and producing war machinery is its role with spare parts being ready at disposal from the manufacturing existing within the Islamic lands.
1065)	Warnings of complete reliance upon the foreign market for weaponry or for most of the weaponry.
1065)	Good points made by 'Abdur Rahmaan Al-Maalikiy in relation to the issue of the necessity to be freed from foreigners in regards to the general industrial policy including the weapon manufacturing policy and an explanation of the possibility of achieving this with ease due to what the Muslims possess as long as the intentions were made sincere and the will made pure.
1067)	Proceeding according to an independent industrial policy is a matter that is Waajib in the Shar'a in addition to it being inevitable to achieve independence from the west.
1068)	Ash-Shaikh Jamaal Ad-Deen Al-Qasimiy: Deploring the fact that the Muslims buy their weapons from the lands of the enemy and his judgment that the Ummah has fallen into sin due to abandoning its necessary required preparations and he says that establishing factories for the manufacturing of weapons is Waajib.

1068)	Ustaadh Zhaafir Al-Qaasimiy and his precious words in regards to the necessity of attaining the fields of knowledge that lead to the establishment of laboratories and factories for the production of advanced weapons.
1071)	The second requirement: What are the sources of financial revenues for the different forms of required army spending.
1072)	These revenues are:
1072)	1. Al-Fa'i and Al-Ghanaa'im (Booty and spoils).
1076)	2. The share (Sahm) in the way of Allah (from Az-Zakaah).
1078)	3. The obligation of Al-Jihaad with Maal (wealth, property).
1078)	What is the Daleel for the obligation of Al-Jihaad by Maal.
1078)	An example of what was normal in regards to what related to Al-Jihaad with Maal (property/wealth).
1079)	Are taxes obliged upon the Muslims for the funding of the Jaish (army) and its preparations? And is this considered to be taxes in the case where it accomplishes the performance of the Fard of Al-Jihaad by way of Maal?
1080)	What was mentioned in the Fataawaa of Ibn Taymiyyah and also in his 'Mazhaalim Al-Mushtarakah'.
1080)	What was mentioned in 'Zaad Al-Mee'aad' of Ibn-ul-Qayyim.
1080)	What was mentioned in 'Fath-ul-Qadeer ' of Al-Kamaal Ibn Al-Humaam.
1080)	What was mentioned in 'As-Siyar Al-Kabeer and its Sharh (explanation)' from the two Imaams: Muhammad Bin Al-Hasan and As-Sarkhasiy.
1081)	What was mentioned in 'Al-I'tisaam' of Ash-Shaatabiy.
1081)	What was mentioned in 'An-Nujoom Az-Zaahirah' of Al-Ataabakiy.
1082)	The opinion that we outweigh to be strongest in this Mas'alah (issue): It is that the Jihaad by Maal takes the Hukm of Al-Jihaad according to the same origin in terms of it being Fard Kifaayah (obligation of sufficiency)... with details about this.
1083)	In the situation where Al-Jihaad is Fard 'Ain (individual obligation) upon all of the Muslims due to the enemy attacking them – then just as it is an obligation upon every Mukallaf (legally mature responsible Muslim) possessing the capability to fight to go out to join the fight, each according to his/her capability, then similarly it is an obligation upon every Mukallaf possessing the financial capability to take from their money that

	which is necessary to fund the fighting.
1083)	From another angle: Al-Jihaad Al-Kifaa'iy and 'Al-'Aini are both in need of an army and the army requires a lot of financial investment and in the situation where the public funds specified for the public interests or that which is available from the share of the Zakaah is not sufficient to fulfil the requirements of the army, then Al-Jihaad by way of Maal (wealth) becomes obligatory upon the people. This is by way of taxes upon those who are rich and affluent and its distribution upon the army so that they can perform Al-Jihaad and this is established by way of the principle: 'That which the Waajib is not completed except with it, is in itself Waajib'.
1084)	4. Voluntary Sadaqah Fee Sabeelillah (Charity in the way of Allah i.e. for Al-Jihaad).
1088)	5. Safeguarding a part of the public property for the interest of the Jaish (army).

Chapter Five

The Ahkaam Ash-Shar'iyah related to the Siyaasah Al-Harbiyah (War policy).

1093)	SECTION ONE The handling/treatment of the members of the Islamic army.
1095)	The first study: The right of the leader (Qaa'id) in regards to obedience and its limitations.
1095)	The first point: What is the meaning of obedience (Taa'ah)? What is the Hukm Shar'i in relation to it? And what is the role of the obligation of obedience of the army to its leadership in regards to establishing the military discipline within its members?
1095)	a. The meaning of Taa'ah (obedience): Complying with commands and responding affirmatively to what the one possessing the command wants.
1096)	b. The Hukm Ash-Shar'i in relation to the Taa'ah (obedience): It is Wujoob (obligation). The texts from the Qur'aan and the Sunnah establishing this and the views of the Fuqahaa in regards to it.
1098)	c. The role of the obligation of obedience to the commanders in regards to establishing the military discipline within its personnel.
1098)	The behaviour of the Muslim in regards to any activity including the military activity. This is specified in accordance to his concepts and feelings (emotions) in regards to it. This can only be established by taking the Shar'iyah rules as the regulator of the behaviour in its regard as emanating from the Islamic Aqueedah (belief) in terms of belief in Allah سبحانه وتعالى and it what has been revealed in the revelation.
1099)	If there are lapses or a deviation in regards to the discipline it is treated and dealt with in accordance to the flaws that have led to them arising.
1099)	Military discipline is a fundamental matter within the army and that which ensures its establishment is that the Taa'ah (obedience) is an obligatory matter according to the Shar'i just like the Wujoob (obligation) of the Salaah and the linkage of this to the Aqueedah (belief).
1099)	The second point: Who is it obligatory to obey within the Islamic army?
1099)	The obedience belongs to the Khaleefah of the Muslims.
1100)	The Khaleefah is the high commander of the army and armed forces in actuality and not in name only.
1100)	And obedience is obligatory to those who the Khaleefah has appointed as commanders and leaders in deputyship to him in accordance to the limitations of the mandatory powers that have been attributed to them.
1101)	If the presence of a commander appointed by the Khaleefah is not

	possible for any segment of the Jaish (army) for any reason then it is obligatory upon this segment to appoint a commander for it just as it is obligatory to obey him in the mission and what he has been convened in regards to until the time that he is approved or changed by the higher authority.
1101)	The Daleel for this is what occurred in the Ghazwah (Expedition) of Mu'tah.
1102)	The third point: The Shar'iyah and Fiqhiy texts which clarify the limits of the obligatory obedience and the prohibited obedience. The following is from that which explains this matter:
1102)	The obligation of obeying the leaders in other than the Ma'siyah (sin) and the prohibition of obeying them in the Ma'siyah.
1102)	It is not permitted to contravene the Ameer (leader) of Qaa'id (commander) due to any natural or moral flaw, or due to his monopolizing of material gains to the exclusion of those whom he is leading, or his burdening them with legitimate compelled costs, as long as he has not ordered that which contravenes the Shar'a.
1104)	Islam denounces those who obey blindly in that which is against the rules of the Shar'a.
1106)	Extracts from: 'As-Siyar Al-Kabeer and its Sharh' which makes clear some of the situations that are connected to the life of the army and what the leadership issues in terms of instructions and that which it is obligatory to obey them in? And that which it is obligatory to disobey them in?
1109)	The second study: The right of the commander to exclude the one he sees brings harm to the army.
1109)	The first point: The value of the army according to Islaam and the necessity to protect it from any harm being attached to it or a cause of it.
1109)	The army safeguards the lands from the foreign aggression, internal corruption (Fasaad), carries the flag of Al-Jihaad, protects the ruling from deviation, guarantees the implementation of Islaam in the Ummah, suppresses those who covet the authority via illegitimate means, establishes the state if it ceases to be, maintains and safeguards it if it is established, prevents it from being divided, restores its unity if it is divided and it represents the life of the Ummah in its political existence from two angles: its local and international.
1110)	Cleansing the army of its corrupted elements – it is the right of the commander and he acts in regards to in accordance to the Maslahah (interest).
1110)	The necessity of treating the deviations of the army and the army is not free of deviations and it was not free of them even in the time of the Prophethood and the rightly guided Khilaafah.

1111)	Example: The stealing away of necklace from the neck of the sister of Abu Bakr at the time of the conquest of Makkah.
1111)	Example: The one drinking Khamr at Hunain.
1111)	Example: The young man/boy who made a lie upon Abu Moosaa Al-As'ari and returned to his family (people).
1112)	Example: The contravention of a mob of people from the army to the commands of 'Amr Ibn Al-'Aas in Alexandria.
1112)	'As-Siyar Al-Kabeer': The large number of troublesome people in the Prophets army due to the great number of Munaafiqeen (hypocrites) and Bedouins within its ranks.
1112)	The reasoning for the Nabi صلى الله عليه وسلم keeping the Munaafiqeen within the army.
1113)	Illustrations of the harm that comes from having corrupted elements within the ranks of the army.
1114)	The second point: Examples of corrupted elements within the army as mentioned by the Fuqahaa.
1115)	That which is connected to elements that have utilised the army to bring harm to the Ummah via it.
1116)	Example: Mustafa Kamaal and the overthrow of the Islamic Khilaafah.
1117)	The protection of the army even from the distinguished leadership and those who are not suspicious when it is feared that deviation could arise due to the severe fondness that people have for the leader and that which is similar to that.
1117)	Example: The preventing by 'Umar Ibn Al-Khattaab (ra) for the Sahaabah to go out for Al-Jihaad.
1118)	Example: Taking away the general leadership of the army of Ash-Shaam from Khaalid Bin Al-Waleed (ra) by 'Umar Ibn Al-Khattaab (ra).
1121)	The third study: The rights of the fighters.
1122)	The first point: Presentation of the most important points mentioned by the Fuqahaa in regards to the rights of the army or those who engage in fighting.
1122)	That which has been mentioned in relation to their right in regards for a good leader to be chose over them in 'Badaa'i As-Sanaa'i'.
1122)	That which was mentioned in 'As-Siyar Al-Kabeer'.

1122)	Bad decisions can be made in regards to the choosing of leaders and in spite of this it is not permitted to go against their command unless it relates to a Ma'siyah (disobedience) or Darar (harm).
1123)	That which was mentioned in 'Al-Mudawwanah' and 'Al-Umm' about this.
1123)	What it is necessary upon the commander of the army to do in regards to fulfilling the rights of his soldiers as mentioned by Al-Maawardi.
1124)	What was mentioned in 'Al-Mughni' in regards to this.
1125)	The second point: Detailing the speech around some of what the Fuqahaa mentioned related to the Huqooq (rights) of the Muqaatileen (fighters).
1125)	a. Safeguarding the lives of the soldiers.
1125)	Opting for war in light of the following:
1125)	Firstly: It is inevitable to wage war following the reasons (causes) for declaring Al-Jihaad.
1126)	Secondly: The decision to wage war after the preparing of the readiness of the force and power that will strike fear into the enemy.
1126)	Thirdly: Maintaining distance from those expeditions that do not provide a large benefit to the Muslims.
1126)	Fourthly: Resolution of going forth into war after evaluating the triumph in it and the speech of Ash-Shaafi' about this.
1126)	'Umar Ibn Al-Khattaab and his extreme concern for and attention to the lives of the soldiers.
1127)	The Nabi صلى الله عليه وسلم said to one of the boys in Al-Khandaq (Battle of the trench): 'Ready yourself with weapons because I fear for you from (the treachery of) Quraizhah (The Jewish tribe in Al-Madeenah)' which was said on the case of the boy visiting (or missing) his family in those days.
1127)	b. Good treatment of the fighters and taking care of their affairs.
1127)	The supervision of the Nabi صلى الله عليه وسلم of the nursing of Sa'd Bin Mu'aadh after his sustaining of a wound on the day of Al-Khandaq (Battle of the trench).
1127)	The Nabi صلى الله عليه وسلم used to fall back on the marches so as to complement and give encouragement to the weak.
1128)	The advice of 'Umar Ibn Abdul Azeez for the commander not to ride an animal that was faster than the rides of his soldiers.

1128)	'Umar Ibn Al-Khattaab (ra) forbade the commanders to withhold the rights (Huqooq) of the Muqaatileen (fighters) and scolding (Tajmeer) them.
1128)	His organisation in terms of going out to fight and times in which they can return to their families and the rotation between those fighting Al-Jihaad and those who are guarding the frontiers.
1129)	Distancing from humiliating the soldiers and paying close attention to caring for their feelings.
1130)	Providing all of the material and moral rights to the soldier and make him feel that his wellbeing is of great importance to the state.
1130)	'Umar Ibn Al-Khattaab (ra) and the story of the mess (khabees) of Azerbaijan.
1131)	'Umar Ibn Al-Khattaab (ra) asking about the affairs of the army upon the Persian front.
1133)	The fourth study: The demonstration of pride (Fakhr) and showing off (Khaylaa').
1133)	The first point: What is Fakhr (pride)? What is its Hukm generally and what is its Hukm in the circumstance of war?
1133)	Al-Fakhr (pride): The flaunting of virtues (qualities) in terms of lineage and position amongst other matters.
1133)	Its general Hukm.
1134)	a. When feelings of arrogance are generated and this hurts the feelings of others this is Haraam.
1135)	b. Seeking 'Izzah (honour) by way of pride in one's race and the texts that forbid this.
1135)	The one who consoles with the consolation of Jaahiliyah (pre-Islaam).
1136)	Raising nationalistic slogans and calls, and the display of pride with traces of Jaahiliyah falls under the prohibition which the Shar'iah texts have mentioned.
1136)	'Umar Ibn Al-Khattaab (ra): We were the lowest (most humiliated) of people and then Allah gave us might and honour ('Izzah) with Islaam.
1137)	c. The mentioning of lineage and position for the purposes of identification only and the preservation of rights is a required matter.
1138)	d. The Fakhr (pride) due to what someone has accomplished of feats, between the prohibited showing off and that which is speaking about the praised blessings bestowed by Allah.

1139)	The Hukm of Fakhr (pride) in the situation of war.
1139)	The approval of the Nabi صلى الله عليه وسلم of the Fakhr (pride) of the fighters for what they achieved in terms of good ordeals whilst giving victory to Islaam overcoming the enemy.
1140)	'Ali Bin Abi Taalib (ra) praised his sword on the day of Uhud in front of the Nabi saw).
1140)	An-Nawawi explains some of the issues that are related to Fakhr (pride):
1140)	His صلى الله عليه وسلم's statement: "I am the son of Ibn Abdul Mutallab!"
1141)	The statement of 'Ali (ra): 'I am the one whom my mother named Haydarah (lion)!'
1141)	The statement of someone: 'Take her (it) and I am the son of Fulaan (so and so)!'
1141)	There is no problem with the news broadcasts to carry the news of the pride of the achievements of the heroes from amongst the Muslims in regards to what they have achieved in terms of heroics and this can be considered as being part of the psychological war against the enemy.
1142)	Hadeeth (speech): Take her (it) and I am the boy of Al-Ghifaari.
1142)	Hadeeth (speech): Take her (it) and I am the son of Al-Faarisi.
1143)	The second point: What is Khaylaa' (showing off)? And what is its Hukm generally? And what is its Hukm in the situation of war?
1143)	What is Al-Khaylaa'?
1143)	It is Kibr (arrogance/pride) and being pleased with oneself.
1143)	Its Hukm generally is of Tahreem (prohibition).
1145)	The Hukm of Al-Khaylaa' in the situation of war is Ibaahah (permissibility).
1146)	The strutting of Abi Dujaanah (ra) between the two rows.
1147)	Decorating the war machinery with silver.
1149)	The fifth study: The Hukm of Muslim spies or non-Muslims from amongst the subjects against the Islamic State.
1150)	The first issue: What is At-Tajassus (spying) according to the linguistic meaning? And what acts are considered to be spying which relate specifically to this study of ours?
1150)	a. At-Tajassus (spying) according to the language is: Following up and examining/delving into or investigating the hidden (non-apparent) matters.

1151)	b. The actions of spying in this study: The study/examination of the points of weakness and the transference of secretive new to the enemy during war.
1151)	Obtaining cultural or mathematical news/information or its like and then transferring this to other states is not considered Tajassus (spying). Journalists and reporters who deal with this type of information and news are not considered as spies.
1153)	The advice of Abu Bakr (ra) to Yazeed Bin Abi Sufyaan to prevent knowledge reaching the enemy related to the military situation of the Muslims.
1153)	What is intended by spying according to the current Islaamic thinking.
1154)	What is intended by spying according to the terminology of those who are engaged in matters related to spying.
1154)	The second issue: The ruling of the Muslim spy who is working for the enemy against the Muslims.
1155)	The first point: The Shar'iah Nusoos (texts) related to this issue.
1155)	a. The story of Haatib Bin Abi Bal'ta'ah.
1156)	b. The story of Furaat Bin Hayyaan.
1156)	c. The blood of a Muslim is not Halaal except in three circumstances.
1157)	The second point: The Fiqhi opinions in regards to the judgement passed upon the Muslim who has spied for the interest of the enemy against the Muslims.
1157)	The first opinion: It is prohibited to kill the Muslim spy and it is allowed to give him a Ta'zeer (discretionary punishment).
1159)	The second opinion: The Muslim spy is killed with details explaining this.
1159)	He is killed as an obligation Mutlaqan (absolutely).
1159)	He is killed before the announcement of his Taubah (repentance) or if spying was a regular occurrence to him.
1160)	It is permissible to kill him or give him a Ta'zeer (discretionary punishment) according to the Maslahah (interest).
1162)	The third point: The opinion that we believe to be strongest in this issue which is the opinion of the majority with explanation of its evidence and details.
1163)	The third issue: The Hukm of the spy from amongst the Ahl-udh-

	Dhimmah.
1163)	According to the Madh'hab of the Ahnaaf.
1165)	According to the Maalikiy Madh'hab.
1165)	According to the Shaafi'iy Madh'hab.
1166)	According to the Hanbali Madh'hab.
1167)	Conclusion: The Dhimmi spy is designated to be killed by Abu Yousuf from the Ahnaaf and the majority from the Maalikiyah. And the strongest view attributed to the Shaafi'iy school permits his killing if it was placed as a condition in the contract of Dhimmah i.e. that he would not spy. And it is also permitted to kill him according to one of the views attributed to the Hanbaliy school whether it was stipulated as a condition to not spy or it was not made a condition.
1167)	The second point: The opinion that we believe to be strongest in regards to the spying perpetrated by the people of Dhimmah.
1167)	The opinion we find to be preponderant is what came as the strongest opinion in the Shaafi'y Madh'hab in a general way with detailed explanation about this.
1167)	If the Dhimmi announces his conversion to Islaam before the implementation of the judgement of killing upon him it is obligatory to refrain from killing him.
1168)	The 'Aqd (contract) of Dhimmah is invalidated by spying and it is permitted for the state to execute him on that basis just as it is permitted for the state to renew the contract of Dhimmah for him and this is done according to the Maslahah (interest/benefit).
1169)	Why have the Shar'iyah texts differed in regards to the punishment of the Muslim and the Dhimmiy in relation to the same crime which is spying?
1171)	The sixth study: The Hukm of fleeing from the army during war.
1171)	The first point: The main Shar'iyah texts which the 'Ulamaa have relied upon in relation to the Hukm for fleeing from the army and their comments upon them.
1178)	The second point: Some of what has been written in the Fiqhi sources about the issue of fleeing from the army.
1178)	1. According to the Hanafi Madh'hab.
1179)	Summary of what is in the 'Badaa'i': When there exists the ability to oppose the enemy then flight is Haraam whilst it is permitted in the absence of ability.
1180)	Summary of what is in 'Siyar Al-Kabeer': Firstly: The Muslims are less

	<p>than 12 thousand and here there are two cases:</p> <p>a. When the Kuffaar do not number twice the number of the Muslims then it is Haraam to flee and they have the capability to oppose the enemy.</p> <p>b. When the Kuffaar are more than twice the number of the Muslims then it is allowed to flee.</p>
1180)	2. According to the Maalikiy Madh'hab: Similar to what came in 'Siyar Al-Kabeer' of the Ahnaaf with some explanation of details.
1181)	<p>3. According to the Shaafi'iy Madh'hab: Firstly: If the Kuffaar are not double the number then there are two cases:</p> <p>- When destruction is not feared then it is obligatory to be steadfast and persist and it is permitted to flee with the purpose of tactics or to join to another group (re-enforcements).</p> <p>- However if destruction is feared then there are two points of view: That is permitted to flee and the correct view is that it is not permitted.</p>
1181)	Secondly: The Kuffaar are more than double the number in which case it is permitted to flee.
1183)	4. According to the Hanbali Madh'hab: Similar to the Shaafi'i Madh'hab with a slight difference.
1184)	The third point: Our view in regards to the issue of fleeing from the army (fight) and departing from fighting the enemy.
1184)	In light of the reality of modern warfare and the Ahkaam Ash-Shar'iyah we view the following:
1184)	1. If a fighter or squadron has been specified with a specific location or role within the plan, it is not permitted to go outside that which has been laid out in the plan.
1184)	2. If the plan permits the tactical retreat or falling back to join reinforcements, then it is permitted for the fighter or squadron to act as he sees fit according to the Maslahah (interest/benefit).
1185)	3. Al-Jihaad in the case of the Qitaal Al-Hujoomiy (offensive fighting) is obligatory according to the Shar'a when the balance of power in the situation is not such where the strength of the enemy is not more than double that of the Muslims and if this is not the case then Al-Jihaad is permitted (Mubaah) and not Waajib (obligatory) as long as a harm does not result from it in which case it would be prohibited.
1185)	Al-Jihaad is only obligatory or permitted when the strength is deficient (i.e. less than half) in terms of the material power of the Muslims because they possess the spiritual power that compensates for that deficiency.
1185)	Example: In the opening conquest of Al-Andalus: The Muslims numbered

	1700 were victorious over an enemy of 70,000.
1186)	4. What is considered in regards to the balance of power is not the number of individuals but rather the sum of the power which each side possesses... and the discussion of the Fuqahaa in regards to this.
1188)	Our understanding of the issue of the number reaching 12,000 and the affect of this upon the Hukm of standing firm or withdrawing from the fighting.
1189)	5. In regards to Al-Jihaad that is obligatory at the time of defence: If a situation arises in which the wiping out of Islaam and the Muslims from existence is desired (May Allah never permit this) then breaking up and fragmenting the hostile front is aimed at and if war is inevitable then no consideration is given to the balance of power and fighting is obligatory and the reliance is upon Allah.
1190)	If the aim is not to wipe out Islaam and the Muslims but rather the intention is to plunder the Muslims wealth/resources then it is obligatory to defend without consideration of the balance of power however if the harm caused by standing firm is greater upon the Islaam and the Muslims than the harmed that would be caused by fleeing, withdrawing, negotiating and the making of concessions, then in this case it is permitted for the sincere commanders to decide upon a withdrawal. This not mean a permanent giving up of what they withdrew from or conceded but rather it only means that they return to prepare the readiness that is necessary to renew the fight.
1191)	6. If the enemy displays its huge military might with the aim of intimidating and unsettling the Muslims whilst they have no power to stand against it then it is obligatory not to give them any excuse or pretext to interfere and ignite war and was mentioned in 'Al'Mughni Al-Muhtaaaj': [Our factions should not rush to drive off a king of theirs who has great power and has entered into the outskirts of our lands due to the great danger that this involves!].
1192)	The fourth point: What is the punishment for the fleeing from the army?
1193)	The texts and realities that are connected to this Mas'alah (issue):
1193)	What was reported that the Nabi صلى الله عليه وسلم stood Juhainah behind Bani Sulaim and ordered her to put the sword upon those who had fled from Bani Sulaim.
1193)	The leadership in Al-Yarmook requested from the Muslim women who were behind the rows to stone everyone who was fleeing from the battle and kill him!
1194)	'Umar Ibn Al-Khattaab (ra) said after the martyrdom of Abi 'Ubaid Ath-Thaqafiy and his men in the battle of the bridge (Al-Jisr) on the Persian front: 'If they would have fallen back to me I would have been a reinforcement for them!'

1195)	<p>'Umar Ibn Al-Khattaab (ra): He reprimanded two men who had fled from fighting.</p> <p>Our view in regards to the punishment for the one who flees the battle:</p> <p>The evaluation of the punishment is left to those who hold the mandatory powers who take into account all of the angles, effects and circumstances related to the reality of the specific fleeing in question.</p> <p>We do not view that the punishment reached to the level of death except in the most extreme situations.</p>
1197)	The seventh study: The Shaheed and the Ahkaam related to him and his family that are left after him.
1197)	The first issue: The definition of the Shaheed (Martyr) as examined in this study.
1199)	According to the Madh'hab: The Shaheed is: The one who was killed by the Mushrikeen (polytheists) with an explanation of details related to this.
1200)	According to the Maalikiy Madh'hab: He is the one who is killed by the waging war only...with an explanation of details related to this.
1201)	According to the Shaafi'iy Madh'hab: Whoever dies from amongst the Muslims in Al-Jihaad against the Kuffaar (disbelievers) for one reason or another from fighting them is Shaheed.
1202)	According to the Hanbali Madh'hab: The one who dies in the battle with the Kuffaar.
1203)	The second issue: Why did Islaam name this person Shaheed (i.e. the witness)?
1203)	Because the Jannah for him is witnessed... to the seven angles mentioned by An-Nawawi.
1204)	The third issue: Some of the Shar'iah texts that mention the merits of Ash-Shahaadah (Martyrdom) and the honoured position of the Shuhadaa' (martyrs).
1208)	<p>The fourth issue: The different types of Shuhadaa:</p> <p>1) The Shaheed in the reward of the hereafter and the rules (Ahkaam) of the Dunyaa (this life).</p> <p>2) The Shaheed in reward without the Ahkaam of the Dunyaa.</p> <p>3) The one who has the Hukm of the Shuhadaa in the Dunyaa and he does not have the complete reward reserved for them in the Aakhirah (hereafter).</p>

1209)	Some of the Saheeh Ahaadeeth in relation to: Who are the Shuhadaa of the Aakhirah?
1211)	The fifth issue: The obligatory behaviour in regards to the Shaheed in relation to his preparation for burial.
1212)	The first point: What is the Hukm of performing Ghusl (washing) over the Shaheed?
1212)	a. The Hukm of washing the Shaheed if he was not Junub (in the impure state of Janaabah).
1212)	The majority: He is not washed and there exists an opinion that says washing him is Waajib (obligatory).
1214)	b. The Hukm of washing the Shaheed if he was Junub (in the state of major ritual impurity). The majority: He is not washed and according to Abu Haneefah and the Hanbaliy Madh'hab amongst others: He is washed.
1217)	c. The Hukm of the Ghusl of the woman who was martyred whilst she was not in a state of purity due to menstruation of childbirth bleeding (Haid or Nifaas). The Maalikiyah and Shaafi'iyah state: She is like the Junub Shaheed and is not washed. Other than them state: There are details in regards to the issue. And we view as strongest that the Shaheed male of female is not washed in any circumstance. d. The Hukm of washing the Shaheed from amongst the Sibyaan (boys). The Jumhoor (majority): He is not washed like the Baaligh (physically mature/pubescent) whilst Abu Haneefah states that he is washed and we view the opinion of the Jumhoor as strongest.
1217)	The second point: What are the Shuhadaa shrouded in?
1218)	They are shrouded in the clothing that they were in and there are two opinions: It is obligatory and it recommended (Mustahabb).
1218)	If the clothes of the Shaheed are insufficient to cover his body then the required covering is completed with what is at hand. The Shaheed is stripped of that which isn't clothing like a weapon or wrist watch etc...
1219)	The third point: Is Salaat-ul-Janaazah (the funeral prayer) performed over the Shaheed?
1220)	Firstly: The most prominent Shar'iyah texts related to the prayer over the

	Shaheed.
1220)	Reports that negate the prayer upon them and others that negate these.
1222)	Secondly: The statement of the Fuqahaa in regards to the issue with their evidences.
1222)	The majority do not say that the prayer is performed over them whilst others say it is.
1223)	Thirdly: That which we find to be preponderant and strongest with a discussion about the Adillah (evidences).
1225)	That which we outweigh to be the strongest view is that it is permitted to pray upon the Shaheed just as it is permitted to leave the Salaah upon them.
1226)	The fourth point: What is the Hukm of moving the Shaheed to bury him in a different point to that which he was martyred in?
1226)	Firstly: Where was the Shaheed buried as has been reported in the Sunnah?
1227)	They are buried in the place where they met their deaths and the situation where the place where they were martyred is not a suitable place for burial.
1228)	Secondly: The opinions of the Fuqahaa in regards to moving the dead generally and the Shaheed in a different direction (point) to where he dies.
1228)	The majority tolerate the moving of the body in a general description from the point of his death so as to be buried in another point whilst the Shaafi'iyyah prohibit it according to the strongest view attributed to them.
1229)	It appears that the Fuqahaa understood the burying of the Shuhadaa in the place where they met their deaths as being Mustahabb (recommended) – according to the majority from amongst them.
1229)	Our view in this Mas'alah (issue): The command for burying the Shuhadaa in the place of their death with its associated Qaraa'in (textual indications/clues) guides to Al-Jazm (decisiveness) and if this does not indicate Wujoob (obligation) then in the least it indicates a Nadm Mu'akkad (confirmed recommended act) and it is not good to leave this Sunnah if it is possible to accomplish it.
1230)	The fifth point: Are a number of Shuhadaa buried within the same grave?
1230)	This is permitted according to what has been recorded in the Shar'iah Nusoos (texts).
1231)	The fifth issue: The obligatory behaviour in regards to the family of the Shaheed after his death.

1232)	The moral honouring/recognition.
1232)	The material honouring/recognition.
1239)	SECTION TWO How to deal with the enemies during war.
1241)	The first study: The Ahkaam related to non-combatants from amongst the enemies.
1241)	Introduction around the realities of wars in the past and modern times to understand those who are not from amongst the enemy combatants? And how they are exposed to being killed or fighting? And who is it permitted to direct the sword (weapons) against?
1244)	Who are the people from amongst the enemy which have Shar'iah texts mentioned in regards to not killing them during the war?
1244)	The texts in this issue are of two types:
1245)	Firstly: The texts that provide in them the Shuroot Al-Qubool (conditions of acceptance) and mentioned in them are: The women, Sibyaan (children before puberty), the 'Usafaa (hired?), hired servants and the very old (senile/decrepit).
1249)	Secondly: The texts that do not provide in them the Shuroot of Qubool (conditions of acceptance) and mentioned in these are: the monks and traders.
1251)	The second issue: Is Qiyaas made upon those who are mentioned from those who are not killed from the enemy in the texts to apply to others? Like the blind, the chronically ill, insane or the peasant?
1251)	There are two Madh'habs (school of thoughts): The one who said: That the 'Illah (Shar'a reason) for killing is Kufr (disbelief) permitted their killing whilst the one who said: That the 'Illah for killing is the ability to fight and this does not permit their killing... in addition to an explanation of the details around this.
1252)	Our opinion: That the first Madh'hab does not permit killing the Kuffaar (disbelievers) for disbelief (Kufr) alone but rather for the disbelief and the rejection to submit to the Islamic rule and enter into the Dhimmah (protection).
1253)	Clarification of the two Madh'habs in regards to the issue (Mas'alah): Firstly: The direction of the one rejecting due to the view of making Qiyaas (analogy) about the one whom the text has stated not to be killed like the woman – The prohibition of raising the sword (to kill) in war is restricted to those whom the text has stated alone and it is permitted to kill other than them like the blind, sick, cowards and people of industry or their like and

	even if they did not really participate in the fighting – and this is the opinion of Ash-Shaafi'iy.
1256)	Secondly: The direction of taking the Qiyaas upon the one whom the text has said is not be killed in war – due to the shared 'Illah (reasoning) and this applies to the one whom his benefit or good (i.e. can benefit the fight of the enemy) is not expected like the one who is infirm or blind – the majority are upon this direction in its general (Mujmal) angle.
1260)	<p>Point to pay attention to: The issue that is being presented here is: Who is it permitted to kill during the war from amongst the enemy's people and who is not permitted to kill whether it is said that the 'Illah of killing the Kuffaar is Kufr (disbelief) or that it is the ability to fight and engage in battle.</p> <p>This Mas'alah (issue) differs from the issue of the legitimacy (legality) of declaring Al-Jihaad against the Kuffaar so that they submit to the rule of Islaam and enter into the Dhimmah (contract of protection and citizenship) if they refuse to enter into Islaam. So even if we were to say that the 'Illah for killing the Kuffaar is Muhaarabah (warfare) – like the Jumhoor (majority) have stated – and then they refrain from warring with the Muslims in the first place, then in this case the legitimacy of fighting them remains if they refuse to enter into the Dhimmah and accept the Islamic rule – and this is the view according to everyone (Ijmaa'). This is the same opinion of those who say that the 'Illah of killing (fighting) is Kufr and those that say that they are fought upon the 'Illah of Muhaarabah (fighting).</p>
1261)	Ibn Taymiyyah is from amongst those who say that the 'Illah for fighting the Kuffaar is Muhaarabah (warring) and he also views the legitimacy of fighting them for the purpose of establishing the Deen of Allah against everyone who stands in the way of its establishment.
1263)	The third issue: In which situations is it permitted to fight those who have been prohibited (in origin) from being killed from the nemies during the battle?
1263)	The first situation (case): If they fight the Muslims in reality (physically) or in meaning via opinion, obedience or incitement.
1264)	The second case: When launching attacks and using weapons it is not possible to distinguish between those whom it is permitted to kill and who is not – and the Daleel for this.
1264)	1. The texts permitting the launching of attacks (and Tabyeet of the enemies).
1265)	2. The texts legitimizing the igniting of fires in the lands of the enemy.
1267)	3. The texts that encourage the use of throwing and this includes in its generality every type of throwing weapon from the past and modern times like the catapult that was used against At-Taa'if and shells/bombing/missiles that are used in modern times.

1268)	The third case: The case of human shields where the enemies use their women and children as human shields to be protected by them with details of this to come.
1268)	The fourth Mas'alah (issue): Does the one in authority possess the right to forbid the killing of people or specific categories of people from amongst the enemy's people during the war from other than those who have been mentioned in the texts?
1268)	Yes it is permitted according to the Maslahah (interest/benefit) or built upon an international or bilateral agreement.
1270)	Final observations: 1. It appears to me that the 'Illah (legal reason) for forbidding the killing of the woman is not just due to the fact that she does not engage in fighting but rather it is an 'Illah Murakkabah (construct/built legal reasoning) that combines the fact that she is a woman with her distancing from the fighting i.e. it is an 'Illah Qaasirah.
1270)	2. Al-'Aseef (hired person): This does not merely mean the Ajeer (hired person) so as to include every person to whom a contract to do some work has been contracted in return for a wage but rather this indicates those who are from amongst the servants whose situation is forced upon them and this reality is different in practice from land to land due to the differences in the viewpoint of the society in regards to hiring. As such it is up to the person in authority to specify those who fall under the category of the 'Aseef from the enemy's peoples so that the fight can be directed away from them.
1273)	3. The Sheikh (old man) from amongst the people of war: If the description of being decrepit does not apply to him i.e. the one who does not possess the ability to bring harm or benefit. If this does not apply to him then he is not included with the Shar'i immunity that prevents his being killed.
1274)	4. It is the right of the person in power to widen or tighten the scope of those who have been ordered not to be killed from those who in origin have not been prohibited to be killed from amongst the individuals or specific groupings from the enemy lands in accordance to what he sees of Maslahah (interest/benefit). And we will explain some cases of interests (Masaalih) that are called for in regards to this.
1277)	The second study: The Hukm of spies from amongst the people of war:
1279)	The Daleel which the Fuqahaa have mentioned in regards to the Hukm applied upon the spies from amongst the people of war.
1280)	The spy from (the tribe of) Hawaazin.
1281)	Firstly: The killing (execution) of the warring disbeliever (Al-Kaafir Al-

	Harbiy) spy who is not under covenant (Mu'aahad) or been granted security (Musta'min). Is the killing by way of obligation, or permissibility if it is possible? The issue holds the possibility of two views:
1283)	We choose the Hukm that killing him is obligatory unless there is a greater harm resulting from his killing than if he was left and not killed.
1283)	Secondly: The killing of the warring disbeliever spy who has entered the Islamic state with security or via the ruling of a covenant with his native land and after this he spies upon the Muslims. What is the Hukm in regards to him?
1283)	According to the Hanafi Fiqh: Abu Yousuf judges that he is to be killed whilst Muhammad Bin Al-Hasan judges that he is given Ta'zeer (a discretionary punishment) and he does not permit his being killed unless his entering into the land was for the purpose of spying and he was using the request for security as a cover to do this.
1284)	According to the Maalikiy Madh'hab: Within the books from the Madh'hab there are texts that make his killing permissible and texts that make his killing obligatory.
1285)	The Shaafi'iy Fiqh: The Hukm is of Ta'zeer (discretionary punishment) and the spying does not invalidate his covenant that would allow for him to be killed etc...
1287)	The Hanbali Fiqh: The Dhimmi invalidates his covenant when he spies and built upon this the one who is there by a security invalidates his covenant by greater reason and it is permissible to kill whoever has been judged to have invalidated his covenant, or enslave him or accept a ransom for him or to let him go like any prisoner of war.
1288)	Our view in this Mas'alah:
1288)	The Hukm upon him is execution and this is implemented as long as he doesn't declare his belief in Islaam and this occurs unless the harms that result from killing him are greater than the harms that result from not killing him
1291)	The third study: The use of lying and deception in the war with the enemies.
1291)	The first point: Is the use of deception in war a necessary matter?
1291)	What does this entail and signify to the experts in military affairs? With examples representing this taken from the Prophetic Seerah.
1291)	Al-Khud'ah (deceit/trickery): This is considered a segment of military knowledge and it an essential matter within battles?
1292)	It is the art Tamweeh (disguise/concealment) and concealing the true reality and the use of deceptive acts.

	Examples of the use of Al-Khud'ah (deception) taken from the Prophetic Seerah:
1292)	The expedition of the Nabi صلى الله عليه وسلم to Bani Lihyaan
1292)	The trickery of Khaalid Bin Al-Waleed against the Romans in the battle of Mu'tah when he made them believe that the Muslims had brought reinforcements which panicked them and exposed them so that the Muslims could take most of their booty!
1293)	The second point: The Shar'iyah texts that permit the use of deceptive style and trickery with the enemy and the views of the 'Ulamaa that relate to this.
1293)	The original position of the Muslim is that he conducts his behaviour in a clear and blatantly straight forward manner unless it is related to a matter than brings harm upon the Muslims or leads to the prevention of the enemy's triumph over them.
1294)	a. The texts related to deliberate ambiguity when an expedition is intended.
1294)	b. The texts related to using blatant deception, or to encourage it in relation to interacting with the enemy in war.
1295)	An-Nawawi: The 'Ulamaa have agreed upon the permissibility of deceiving the Kuffaar in war unless this would mean the breaking of a covenant or security (Amaan) in which case it is not Halaal (permitted).
1295)	The trickery and deceit reflected in the story of Abu Busair following the Sulh (treaty) of Al-Hudaybiyyah.
1295)	The deception of 'Ali Ibn Abi Taalib with 'Amr Bin Wudd when he duelled against him in the day of Al-Khandaq.
1295)	Texts related to lying in war
1295)	An-Nawawi: The Zhaahir (apparent) is the permissibility of the reality of the same lie however restricting to an allusion (hint) is better.
1296)	The license given in relation to the killing of Ka'b Ibn Ashraf.
1297)	Ibn Hajar: Included in this license is the permission to lie blatantly and by hinting.
1299)	The fourth study: The bodies of the enemy.
1300)	The first requirement: Exemplary punishment (At-Tamtheel) with the enemy's bodies.
1301)	The first matter: What is meant by the exemplary punishment of the enemy's bodies: Severing any limb from its body or mutilating/maiming it.

1302)	The second matter: The Nusoos (texts) that are related to this matter.
1302)	The mutilation of Hamzah the paternal uncle of the Nabi صلى الله عليه وسلم and what has been said in regards to it and what was revealed from the Qur'aan.
1303)	The forbidding of An-Nuhbaa (looting/plundering) and Al-Muthlah (reciprocating the like).
1304)	And do not imitate (resemble the acts)...
1304)	The third matter: The opinions of the 'Ulamaa in relation to the Tamtheel of the enemy's bodies.
1304)	The first opinion: It was permitted upon the condition of being done in a like way and then this was abrogated and became Haraam.
1305)	The second opinion: Its Hukm is Makrooh Tanzeehiy only.
1306)	The third opinion: Tamtheel with the enemy's corpse is permitted if the Maslahah calls for it.
1307)	<p>The opinion that we find preponderant in this issue.</p> <p>We view the permission of At-Tamtheel on the condition that it is done in a like way and that this Hukm remains (i.e. is not abrogated) with an explanation of this Tarjeeh (process of outweighing).</p> <p>Summary conclusion of how we view this Mas'alah in light of the preceding texts.</p>
1310)	1. The original position is that At-Tamtheel with the enemy's corpses is Haraam due to the forbiddance of this.
1310)	2. And it is permitted to do the Tamtheel in like (i.e. what they did to you).
1310)	<p>3. It is obligatory upon the Nabi صلى الله عليه وسلم to have patience and refrain from At-tamtheel and not to take revenge for his uncle.</p> <p>It is recommended (Mandoob) upon the Muslims to have patience and refrain from At-Tamtheel and to not take revenge for those of the Muslims to whom this has been done.</p>
1311)	The second requirement: Post mortem of the enemy's bodies for medical research reasons.
1311)	From which angle did the classical and modern Fuqahaa examine this issue?
1312)	The classical: They studied the post mortem of the corpses in a general manner by cutting open the pregnant woman to extract the foetus and to cut open the dead so as to extract precious (valuable) things. Is this

	permitted or not?
1312)	The modern: They studied the issue in a general manner for the interest of benefiting from the post mortem in relation to medical research and studies and to investigate a crime.
1313)	And what concerns us in this study is the following:
1313)	The first matter: Is the Tashreeh (post mortem) a form of Tamtheel or not?
1313)	The reality of the post mortem is that it is Tamtheel and Tashweeh (mutilation) regardless of the intention of the one performing it.
1313)	The second matter: If it is permitted to practise At-Tamtheel with the corpses of the enemy in a manner that is equal to what they did, then is it permitted to seek benefit in that in terms of medical research studies?
1313)	It appears that this would be permitted because obtaining that which benefits medical research studies is a matter that has been made legal in a general manner and the Tamtheel with the corpses of the enemy in a like manner is also Mashroo' (legitimate) so there is no problem in reaching a Mashroo' (legal) matter by way of another legitimate legal matter.
1313)	The third matter: Is it allowed to practise At-Tamtheel (mutilation and its like) with the corpses of the enemy in accordance to the Maslahah just as it has been permitted in accordance to the treatment of the like.
1313)	According to the Ahnaaf and the Hanaabalah: It is Jaa'iz (permitted).
1313)	According to the Shaafi'iyah: It is permitted but Makrooh without the restriction to the Maslahah.
1314)	And as long as we are tying the permissibility to the treatment of the like (i.e. reciprocation) according to what we have found to be strongest, then we do not view the permissibility of the Tashreeh (post-mortem) of the bodies of the enemy if they themselves refrain from mutilating the bodies of the Muslims.
1315)	The third requirement: Burial (concealment) of the enemy's corpses.
1315)	The first matter: Some of what was mentioned by the Fuqahaa in 'As-Siyar al-Kabeer' about the burial of the corpses of the enemy from amongst the people of war: They corpses are buried to remove harm.
1315)	In the commentary of Ad-Dusooqiy it was stated: If a dead Kaafir is found then it is obligatory to bury him and even if he was an enemy combatant. And it is said: They are left so that the dogs can eat him!
1316)	It was mentioned in 'Fat'h-ul-Azeez': In regards to the obligation of burial there are two view: One of them is that it is Waajib and the other is that it is not Waajib and that it is even allowed to lure the dogs upon them.

1316)	Al-Faraa' from the Hanbali school: The one who is killed from amongst them is buried.
1316)	Ibn Hazm: The burial of the Kaafir Harbi (one at war) and other than him is Fard (obligatory).
1317)	The second matter: The Shar'iah Nusoos (texts) that have come dealing with this Mas'alah (issue) and some of what has been mentioned in commentaries in relation to it.
1318)	About the throwing of those killed in Badr into Al-Qulaib.
1319)	His صلى الله عليه وسلم's command to bury the dead woman who had been killed.
1320)	The Nabi صلى الله عليه وسلم did not pass the corpse of a person except that he commanded that it be buried.
1320)	The third matter: The opinion that we outweigh to be strongest in this Mas'alah: The obligation of burying the corpses of the enemy in war according to what is possible and the evidences for this view.
1323)	The fourth requirement: Handing over the bodies of the enemies to their people.
1323)	If the enemy request from the Muslims to hand the bodies over or to allow them to take their dead then it is permitted to allow them but it is not obligatory and is viewed according to what the Maslahah (interest/benefit) dictates.
1325)	SECTION THREE The actions undertaken in war and different behaviours: Between that which is permitted and that which is prevented.
1327)	The first study: The Hukm of fighting the enemy who has taken a human shield from amongst the Muslims or non-Muslims.
1327)	The first issue: What is meant by taking a human shield in this study? And who are those who are meant by human shields whom the enemy take shelter behind?
1327)	The first point: What is meant by taking shield in this study? It means the enemy taking some of the people as a shield behind which he protects himself knowing that his foe will hesitate a lot in regards to attacking him.
1328)	Modern examples of realities that take the Hukm of shielding (At-Tatarrus).
1329)	The second point: Who are those are meant by human shields or what are the kinds of human shields that are meant in this study?

1329)	<p>There are two types:</p> <ol style="list-style-type: none"> 1. A human shield from the Muslims, whether these are from the subjects of the Islamic State who the enemy has taken hostage or they are not subjects of the Islamic State. 2. A human shield from amongst the disbelievers from the people of war (Ahl-ul-Harb) and they are from those whom Islam has prohibited from killing like women and children.
1329)	The second issue: The Hukm Shari'iy in regards to fighting the enemy when he has taken shelter behind human shields. It differs in accordance to two matters:
1329)	<ol style="list-style-type: none"> a. The kind of shield that he is being protected by. b. Is there a necessity in fighting the enemy in this situation or to continue fighting?
1330)	The first point: The necessary case that calls for fighting the enemy in the case where the enemy is being protected by a shield from the Muslims.
1330)	What is meant by 'The necessary case that calls for fighting the enemy'.
1330)	What is meant by that is: An attack by the enemy upon the Muslims, or close proximity fighting, or that many Muslims would be killed if he abstained from fighting and this situation returns to the evaluation of the one in authority in accordance to the difference in circumstances involved.
1331)	The Hukm in this situation: It is obligatory to fight the enemy according to the Jumhoor (majority). However it is obligatory upon the Muslims.
1331)	<p>There are two matters here:</p> <p>Firstly: To avoid hitting the shield as much as is possible except for that which occurs out of compulsion or error.</p> <p>Secondly: To not have the intention in the heart to strike the shield and even if the sensed intention is present.</p>
1332)	Another view: The fighting in this situation is Haraam.
1334)	The second point: The case of necessity in regards to fighting the enemy and he has taken shields from his own people like women.
1334)	The Hukm (legal ruling): There is no difference amongst the Fuqahaa in regards to the permission to fight whilst trying to avoid hitting the shield as much as possible.
1335)	The third point: Where it is not necessary to engage the enemy in fighting whilst he is seeking protection from a Muslim shield and those who take his Hukm (ruling) like the Ahl-udh-Dhimmah.

1335)	<p>There are two opinions:</p> <p>The opinion that says that it is permitted and even if the shield perishes (The majority of the Ahnaaf and the Maalikiyyah).</p> <p>And the opinion that forbids the fighting in order to protect the shield (Ash-Shaafi'iyyah and Al-Hanaabalah).</p>
1337)	We outweigh as strongest that fighting is prohibited in this case with evidence.
1338)	The fourth point: When fighting is not necessary and he is being protected by a shield from amongst his women and children.
1338)	<p>The Jumhoor (majority): They permit the fighting in this case.</p> <p>And the Maalikiyah prohibit the fighting! And we find the opinion of the majority to be strongest.</p>
1343)	The second study: The utilization of weaponry that covers other than those fighting with harm (Weapons of mass destruction).
1343)	Introduction about the weapons existing in the early period of Islaam and the appearance of modern weaponry in the time of As-San'aaniy, Ash-Shawkaani and Ibn 'Aabideen like rifles and cannons followed by the development of weapons of mass (complete) destruction that are present in our current time.
1347)	The first requirement: Weapons of annihilation in terms of humans, animals, vegetation in addition to buildings like nuclear bombs. What is the Hukm of using them in the war against the enemy?
1347)	The first issue: The weapons: Those from the past which destroy features of life and destroy installations and the position of the Fuqahaa in relation to them. Do the modern day weapons of mass destruction fall under their category (in reality)?
1347)	The weapons and means (of weaponry) in the past that fall under this type include: catapults, burning, smoking out, cutting of trees, destruction of cultivation, destruction of buildings, cutting off water and polluting them with poison, and sending insects against the enemy. There is no difference amongst the Fuqahaa in regards to using these against the enemy if it is the norm of the enemy to use these weapons or if it is not possible to win the war except with the use of these weapons.
1347)	The statement of An-Nawawi in regards to the permissibility of laying siege to the enemy and launching these weapons (upon the enemy).
1350)	Discussion about the use of fire as a weapon and the Hadeeth: Hubbaar Bin Al-Aswad.
1350)	Our outweighing is towards the Madh-hab of Ash-Shaafi'iy unless there is

	a Maslahah that is above and beyond the use of these type of weapons in which case it is necessary to refrain from using them.
1350)	Our discussion of what Ash-Shawkaani said.
1353)	Do the weapons of mass destruction from our current age like nuclear bombs and what is similar fall under the category of the weapons and means used in the old times which lead to destruction?
1353)	The answer: Yes they are linked to them (in regards to the reality).
1354)	The second issue: What is the Hukm of using weapons of mass (complete) destruction against parts of the enemy's lands which include within them those whom it is prohibited to intend to kill like Muslims, and disbelieving women and children subjects of the enemy? The opinions of the Fuqahaa.
1355)	a. It is permissible to use them to establish the Fard of Al-Jihaad whilst paying attention to the condition of its usage which is the difficulty of gaining the upper hand against the enemy without its use (Al-Ahnaaf).
1355)	b. It is permitted to use them, even if it is not necessary and even if the battle can be won without it upon the condition that the Muslims who are exposed to perish are very few within the lands of the enemy (Ash-Shaafi'iy).
1355)	c. It is Haraam to use them in other than the case of Daroorah (necessity) if Muslims or the children of the Kuffaar are exposed to the strike. And it is permitted to use them if there are only combatants who are threatened.
1356)	The Aayah: <i>"If they (the believers and the disbelievers) should have been apart, we verily would have punished those of them who disbelieved, with painful torment."</i> (Al-Fat'h 25). And a discussion about it.
1357)	That which we find preponderant in relation to this issue.
1359)	The second requirement: Weapons that annihilate humans, animals and vegetation but do not destroy buildings and installations like Neutron bombs and chemical and biological (germ) weapons. What is the Hukm in relation to using these?
1359)	The answer: It is permitted like the Nuclear bomb.
1361)	The legality of using these weapons does not mean that Islaam places a higher value to the material elements (buildings/infrastructure) over the value it places on the human as can be seen with other civilisations. This and the outweighing Maslahah is a condition for its usage.

1363)	The third study: From amongst the practises of the fighters and the place of the Shar'iy Ijtihad in regards to it.
1363)	Introduction.
1365)	The first requirement: Delaying the prayers from their set times due to warfare.
1365)	The first point: The Fiqhi opinions in relation to this Mas'alah with their Adillah (evidences).
1365)	Al-Ahnaaf: It is obligatory to delay the Salaah from its time due to necessity when being engaged in the actions of war.
1367)	The majority: It is not permitted to delay the Salaah from its time due to being engaged in warfare but rather it is performed according to what is possible.
1368)	The evidence of the Jumhoor in regards to the correctness of the Salaah performed however possible and even whilst busy in the war and being attacked and whilst walking etc...
1370)	<i>"So if you fear (an enemy) (perform the Salaah) on foot or riding."</i> (Al-Baqarah 239) The Hadeeth about Abdullah Bin Unais and how he prayed whilst walking during his mission to kill Khaalid Bin Sufyaan Al-Hadhaliy.
1370)	The prayer of the Muslims at the time of the Sahaabah (rah) in the situation of Khawf (fear) whilst riding and the condemnation of Al-Ashtar due to his descending to the ground to pray which was contrary to the Jamaa'ah (group) of the Muslims.
1371)	The answer of the Jumhoor (majority) in regards to the Messenger صلى الله عليه وسلم leaving a number of prayers on the day of Al-Khandaq.
1371)	The Ahnaaf: The Ghazwah of Dhaata-r-Ruqaa' in which he had prayed the Salaat-ul-Khawf (prayer in the situation of fear) and this was before Al-Khandaq, and this Salaah was left there.
1373)	The second point: The opinion that we find strongest in relation to this Mas'alah.
1373)	1. At the time of Khawf (fear) from the attack of the enemy there are two prayers: a. Salaat-ul-Khawf which is performed in Jamaa'ah in a specific manner and has been approved by the majority of the Fuqahaa including some from the Ahnaaf. b. The second is the Salaah in extreme fear which is when the enemy is being engaged and is performed whilst moving. This type what rejected

	by the Ahnaaf and obliged the delay of the Salaah in this situation.
1374)	We find as preponderant the view for the legality of both types of Salaah.
1374)	2. And we find that the Salaat-ul-Khawf was legislated before Al-Khandaq because the Ghazwah of Dhaata-r-Ruqaa' preceded it.
1376)	3. It has not been reported that the Nabi صلى الله عليه وسلم prayed the Salaah of extreme fear in Al-Khandaq and indeed he delayed a number of prayers in it.
1377)	4. The Nabi صلى الله عليه وسلم ordered his Sahaabah (rah) not to pray 'Asr until they had reached Banu Quraizhah and some of them prayed after its time had ended.
1378)	5. At the time of the siege of Tustar the army delayed their Fajr prayer until after the day had come and a number of the Sahaabah were amongst them.
1379)	After all that has preceded we find the following to be strongest: In the situation of war it is permitted to pray the Salaat-ul-Khawf or the Salaah of extreme fear in its set times in the case where this does not result in harm.
1379)	And it is permitted to delay the Salaah from its set times and make Qadaa for it afterwards.
1379)	And it is permitted for the Islamic leadership to issue orders for the fighting Muslims to not occupy themselves in the Salaah away from what they have been tasked with in terms of necessary actions of war if the necessities of the war demand that.
1380)	From the recent (Fuqahaa) who say that the Salaah can be delayed due to the reason of war are: Ash-Sheikh Muhammad Al-Ghazaali and Doctor Wahbah Az-Zuhailiy.
1381)	The second requirement: The style of abduction against the subjects of the enemy states and taking them as hostages.
1382)	The first point: Is the style of abduction of the enemy's subjects as individuals or groups by any method considered.
1382)	Is it considered from the styles that are legal in Islam? And what is its Shar'iah view? And what are the limits to its legitimacy (legality)?
1382)	The mentioned Khatf (abduction/kidnapping) is a legitimate action because it is regarded as one of the actions undertaken in war. And its reality is the forceful taking of warring Kuffaar or unexpectedly and then taking them prisoner.
1383)	The limits related to the legitimacy of abduction (Al-Khatf) and the taking

	of hostages or prisoners is that they are not from the following categories:
1383)	1. Foreign ambassadors and the evidences for this.
1385)	2. Those who entered Daar-ul-Islaam in a legitimate manner from amongst the subjects of the warring nations.
1386)	3. Subjects from states that are tied to peaceful covenants.
1386)	4. Subjects of warring nations if they are residing in states that have peace agreements with the Muslims.
1387)	5. Individuals or groups whom the message of Islaam has not been conveyed to (the Islaamic Da'wah) or it has been conveyed to them but they are still within the time period that was given for them to study the invitation and they have not yet made an official decision in regards to it.
1388)	The style of abduction is under the command of the one holding power in the Islamic State so he can forbid it and he can define and limit its scope and its goals in accordance to what he judges to be in the Maslahah.
1389)	The Muslims from amongst the citizens of other states are permitted to use a card (paper) of abduction against those who declare revolution against them (Muslims) in their lands and the Islamic state is not responsible for their behaviour and even if it was tied to these states with peace treaties (the band of Abi Baseer).
1389)	The second point: Some of the aims that are intended via resorting to this style by looking at what has been reported of these type of incidents in the books of Sunnah and Prophetic Seerah.
1390)	1. The abduction (capturing) of a group from the Quraish at Al-Hudaybiyyah after the contraction of the Sulh (truce).
1390)	2. The abduction (capturing) of a group from the Quraish at Al-Hudaybiyyah after the contraction of the Sulh (truce) and the killing of the Sahaabi Ibn Zunaim.
1392)	3. The abduction of Thamaamah Bin Uthaal.
1395)	4. The abduction of Al-'Uqailiy, the possessor of the Saabiqah of Al-Haajj.
1396)	The abduction of some of the serving boys who were allied to the Quraish before the Battle of Badr.
1397)	Summary: The Legitimacy for abduction and taking hostages for a number of purposes which are: military, peaceful, security, moral, for knowledge or material purposes or other than these from every type of legitimate purpose.
1399)	The third requirement: Suicide operations or martyrdom operations – What is the Hukm Shar'i in regards to them?

1399)	The first type: That which is not problematic as it is from the justified Istish'haad (martyrdom).
1399)	The individual Muslim or small group who are intent upon martyrdom by facing a large number of the enemy for a legitimate Maslahah (interest/benefit).
1400)	The Istish'haad (martyrdom) of seven from amongst the Ansaar in front of the Nabi صلى الله عليه وسلم at Uhud.
1401)	The second type: That which has detail attached to the Hukm in accordance to the situation in which these operations occur in terms of fulfilling the necessity to go ahead with it or not fulfilling the necessity for it.
1401)	This is like the fighter who wears around himself a belt of explosive materials.
1401)	a. If it is called for by Daroorah (necessity) then it is permitted ¹
1402)	b. If it is not a necessity then it is not permitted.
1403)	The third type: That which is considered to be from the prohibited suicide.
1403)	This is like the fighter attempting suicide so that he does not fall prisoner to the enemy or to escape from anticipated torture.
1404)	The discussion of Ash-Sheikh Hasan Ayoob in relation to the possibility of the permissibility suicide in this situation.
1404)	To rid oneself of pain (and suffering) via suicide – is from amongst the void Masaalih (interests) according to the Islaamic Shar'iyah.
1406)	The fourth type: That which there are different points of view in regards to acts of suicide or martyrdom.
1406)	This is like the lighting the ship of the fighters with fire and then throwing themselves into the sea whilst they do not know how to swim.
1406)	The statements of the Fuqahaa in relation to this: Some say there is no problem in this whilst others say that it is not permissible.
1407)	My opinion in this issue:
1408)	If his intention was to escape from the fire then there is no problem throwing himself in the water if he did not hope to be saved.

¹ This point must be linked to the other sections in this thesis which detail when we can fight, who we can fight and who is a legitimate military target.

	And if his intention was suicide and to speed up the death by drowning (instead of burning) then it is not permissible.
1411)	The fourth requirement: Violating the honours of the people of war. Does this come from the general violation (Istibaahah) in relation to them in regards to the self, honour and wealth?
1411)	What is meant by the violation of the honours here is: The violation of Zinaa (adultery) with the women from the people at war from amongst the Kuffaar.
1411)	The meaning of violating the honours is within the general making Halaal (Istibaahah) in regards to the disbelieving people at war which is to take their women as captives and for the fighters to have relations with them like they have relations with their own wives.
1412)	The first point: Is it permissible to perform Zinaa with the women from the disbelieving people at war?
1412)	Firstly: The Hukm Shar'iy in regards to Zinaa – It is from amongst the major prohibited acts with its evidences.
1413)	Secondly: Is there a Shubhah (doubt/suspicion) in regards to the making Halaal (Istibaahah) of Zinaa with the disbelieving women from amongst the people at war? <i>“Nor do they tread on any ground that enrages the disbelievers, or do they inflict upon an enemy any infliction.”</i> (At-Taubah 120)
1414)	As-Suyootiy transmitted from Abu Haneefah: That he used the above evidence to permit the Zinaa with the women from amongst the people of war in Daar-ul-Harb.
1414)	Thirdly: The Haqq (truth/correct view) in regards to this Mas'alah (issue).
1415)	Committing Zinaa with these disbelieving women of war is Haraam according to the Shar'a due to the general Shar'iyah texts. The mentioned Shubhah (doubt/suspicion) does not hold any relevance to the correct view due to the following:
1415)	a. The word Wat'un and An-Nail (in the Aayah) must be understood in relation to the context in which they have been used – which is war.
1415)	b. The two words can both validly be applied upon the Fisq (disobedience/rebelliousness) of the males if they do not restrict themselves to the subject of war and nobody has said that this is permitted.
1416)	c. The dispute in regards to this Mas'alah: It is not upon the fact that the Zinaa intended here in this situation is Haraam or Mubaah but rather it is in relation to establishing the Hadd (set punishment) upon this act of

	Zinaa. Is it applied in Daar-ul-Harb or not?
1417)	<p>d.</p> <p><i>“And those who guard their chastity (i.e. private parts, from illegal sexual acts). Except from their wives or (the captives and slaves) that their Right hands possess, for then, they are free from blame. But whoever seeks beyond that, then those are the transgressors.”</i> (Al-Mu’minoos 5-7)</p> <p>The Aayah restricts the legality of having intimate relations with women to wives and slaves and it negates the legitimacy of anything other than that.</p>
1417)	The origin of Al-Ibdaa’ is Tahreem (prohibition).
1417)	The second point: What is intended by As-Saby (captive) from the people at war? And what is the position of the Fuqahaa in regards to enslaving the Saby.
1418)	Firstly: What is the Saby: The women and children who fall into captivity from the people of war.
1419)	<p>Secondly: What is the position of the Fuqahaa in respect to making the Saby a slave.</p> <p>It is a matter that is agreed upon by all of the Madhaahib Al-Fiqhiyyah: It is an automatic Hukm as a result of captivity according to the Shaafi’iyyah and Hanaabalah. As for the Hanafiyyah: It is the result of the decision of the one who possesses the mandatory powers to decide that with the permissibility of the decision being to ransom them at the time of necessity. As for the Maalikiyyah: The enslavement is not an inevitable matter, rather it is up to the one possessing the mandatory powers (i.e. Ameer) to decide the Hukm (judgement) in regards to enslavement or ransoming or freeing (according to a view).</p>
1420)	The third point: What are the repercussions that result from the judgement of enslaving the Saby? And is it permissible to enslave the Saby in our current time?
1421)	Firstly: What are the consequences of the Hukm of making the Saby a slave?
1421)	The annulment of marriage between the female Sabys and their husbands if they were married.
1421)	The becoming Halaal of having intimate relations with them like they would with their wives for those whom the women have become belonging to from amongst the men – with Adillah (evidences) in regards to this.
1422)	The Sahaabah would satisfy themselves with the female Sabys and would act so as not to impregnate them, hoping for the payment of ransom from their people.

1423)	lbn 'Abbaas (ra) and his safeguarding (from impregnating) a girl (female slave) who was Baghiy (from rebels at war against the Islamic authority).
1423)	Secondly: Is it permissible to enslave a Saby according to the Shar'a in our present time?
1424)	a. Does the approval of Islaam for enslaving the Sabi act as a pretext for acting according to its like (i.e. if the enemy does it we do it, if not we don't)?
1424)	Many of the Islamic writers in our current time say this.
1424)	The error of accepting the accusations of the orientalis levelled against Islaam in matters that they reject and then go on to defend against the accusations in a manner that is pleasing to the accuser.
1425)	The Hukm of enslaving the Saby. Even if the enemy cancels this act it still remains valid and legitimate according to Islam and regarded as being from the weapons that apply pressure and fear (upon the enemy). It is permitted to display it openly to his face according to the Maslahah.
1425)	b. Do the circumstances of war in the modern age dictate according to the Shar'a or the reality that enslaving should be prevented?
1426)	Some of the modern writers have stated that enslaving the Saby in modern warfare does not have any justification which is the opposite to the case of the wars in the past (early times of Islam).
1429)	A discussion of this idea and affirmation that the female element is not abducted from the modern wars.
1429)	The Saby is not legitimate from those who are taken from those who accompany the army alone but rather the Saby is permitted even from those taken from their homes in terms of women and children and the evidences for this.
1430)	c) Are there cases in which it is possible to enslave a Saby (women) and then having intimate relations with them in a manner that is in accordance to the Shar'a in the current time?
1431)	What was mentioned in 'Al-Asbaah Wa-n-Nazhaa'ir' of As-Suyootiy and the commentart of lbn 'Aabideen.
1432)	d. How is it possible to come to the conclusion of preventing the taking of slaves from the Saby according to the Shar'a in the modern age?
1432)	By way of making agreements with other nations around this issue.

Chapter Six

The reasons for ceasing the Qitaal in Al-Islaam, its affect in relation to the spreading of the Da’wah, the establishing of peace and the safeguarding (saving) of lives.

1437)	SECTION ONE The entering of the enemies into Islaam and what results from that in terms of the ending of the state of war and protecting the (further spilling of) blood.
1437)	The first Mas’alah (issue): The Adillah Shar’iyah for the obligation of stopping the Qitaal when the enemy proclaims its acceptance of Islaam.
1437)	<i>“Then you shall fight them, or they shall surrender”</i> (Al-Fath 16) Hadeeth: “I have been commanded to fight until they bear witness to Laa Ilaaha Illallah Wa Anna Muhammadar Rasoolallah...” (Agreed upon).
1439)	“Call them to Islaam and if they respond positively then accept this and refrain from fighting them” Saheeh Muslim.
1440)	“Then he struck one of my hands with his sword and severed it. Then he said: I have submitted (become Muslim) to Allah! Should I then kill him...? The Messenger of Allah صلى الله عليه وسلم said: Don’t kill him” Saheeh Muslim (Miqdad Bin Aswad is the narrator).
1440)	The study of the Fuqahaa around the Hukm upon the people that enter into Islaam and their stipulation that the words they express indicate their rejection of what they used to hold of false beliefs.
1441)	The second issue: Enticing the people of war to enter into Islaam and to refrain from fighting.
1441)	The Nabi صلى الله عليه وسلم undertook a number of ways of doing that including: His pledging to keep the heads of lands within their positions if they embraced Islaam: His صلى الله عليه وسلم’s letter to the two kings of Oman and the one in charge of Al-Yamaamah.
1442)	His pledging to preserve the status of people of capabilities and specific skills: The enquiring of the Nabi صلى الله عليه وسلم about Khaalid Bin Waleed before his acceptance of Islaam and his statement: “If his defiance (spite) was on the side of the Muslims against the Mushrikeen (polytheists) then it would be good for him and we what place him in front of others.”
1443)	The spending of money with liberality (in a generous manner) so that that could act as a means for some of the Mushrikeen to announce their Islaam. Anas: “If a man embraces Islaam and does not want anything except for the Dunyaa (material gains) from it. Then he will not accept

	Islaam except that Islaam will become more beloved to him than the Dunyaa (the world) and all that is upon it!" Saheeh Muslim.
1444)	Safwaan Bin Umayyah and Maalik Bin 'Auf the leader of the Mushrikeen of Hawaazin and the role money played in his acceptance of Islaam.
1444)	His صلى الله عليه وسلم's acceptance from the peoples of some of the lands upon legitimate conditions in return of their declaration of Islaam. This is like having independence from the Islamic State in some administrative matters (The Shuroot (conditions) of Thaqeef (The people of Taa'if) for their acceptance of Islaam).
1447)	The third issue: The affect of Islaam in regards to the people of war in terms of sparing their blood in addition to other general affects.
1447)	"Every Muslim is Haraam (inviolable) to every other Muslim" (Saheeh Muslim). "They say: Laa Ilaaha Illallah... (then) they have found refuge (sanctuary)" (Abu Daawood).
1448)	<i>"And do not say to anyone who greets you with Salaam (by embracing Islaam): You are not a believer"</i> (An-Nisaa 94) Salmaan Al-Faarisy: "If you accept Islam then you have that which we have (of rights and responsibilities) and that which is upon us (of duties/obligations)" (At-Tirmidhi).
1451)	SECTION TWO The payment of Al-Jizyah and the acceptance of non-Muslims from the people of war to submit to the rules of Islaam.
1452)	The first issue: What is meant (intended by the term) Al-Jizyah? And what are the Adillah Shar'iyah in relation to the obligation of stopping the fighting against the people of war if they give the Jizyah and complete the contract of Dhimmah?
1452)	Firstly: What is Al-Jizyah?
1452)	It is a term applied to the contract of Dhimmah just as it is applied to the money that is taken from the disbeliever every year for him to reside in Daar-ul-Islaam.
1452)	An illustration of the contract of Dhimmah.
1453)	Secondly: The Adillah Shar'iyah upon the obligation of stopping the fighting upon the payment of the Jizyah.
1453)	<i>"Fight against those who believe not in Allah, nor in the Last day, nor forbid that which has been forbidden by Allah and his Messenger and those who acknowledge not the Religion of truth among the people of the Scripture (Jews and Christians), until they pay the Jizyah with willing submission, and feel themselves subdued"</i> (At-Taubah 29).

1454)	Al-Mugheerah Bin Shu'bah: "The Nabi صلى الله عليه وسلم commanded us... to fight you until you worship Allah alone or pay the Jizyah" (Al-Bukhaari).
1454)	What is meant by the Jizyah that is paid by the people of Dhimmah here. It is not the royalty that the people of Muwaada'ah (lodging).
1454)	Hadeeth of Buraidah: "Then if they reject (i.e. Islaam) then ask them for the Jizyah. If they then respond positively accept that from them and refrain from fighting them" (Saheeh Muslim).
1455)	The statements of the Fuqahaa in relation to the obligation of stopping the fighting when they give the Jizyah.
1456)	The second issue: Who are the people of war from whom the payment of the Jizyah is accepted with the meaning of contracting the Dhimmah for them and ending the war against them as a result of that.
1456)	The Madh'hab of the Ahnaaf: The contract of Dhimmah is legitimate in regards to all of the disbelievers with the exception of the 'Arab Mushrikeen and apostates.
1456)	Madh'hab of Maalik, Al-Awzaa'iy and the Fuqahaa of Ash-Shaam: It is taken from all types (Ajnaas) of Mushrik (polytheist/disbeliever) except for the Murtadd (apostate).
1457)	Madh'hab Ash-Shaafi'iyyah: It is not taken except from the Ahl-ul-Kitaab and the Majoos (Magians) whether they are Arab or non-Arab.
1457)	Madh'hab of the Hanaabalah: Like the Shaafi'iyyah and in a report attributed to them: It is accepted from all of the Kuffaar except for idol worshippers from the Arabs.
1457)	Connecting the previous Fiqhiy opinions to the reality of the non-Islamic factions existing in our current age taking into account the difference in their types and beliefs.
1458)	Firstly: The evidences for the aforementioned opinions with Tarjeeh (outweighing between them).
1458)	Firstly: The evidences: The disbelieving Arabs, other than the Jews and Christians and Majoos (Magians) – The Jizyah is not accepted from them and they have no choice in front of them except to accept Islaam or to fight. The Daleel for this is: <i>"You shall be called to fight against a people given to great warfare, then you shall fight them, or they shall surrender"</i> (Al-Fath 16)
1459)	Nothing is accepted from the Murtadd (apostate) except for Islaam. Its evidence: "Whoever changes his Deen, kill him" (Al-Bukhaari).

1460)	All of the Kuffaar from all of the types: It is permitted to convene the contract of Dhimmah for them. The evidence: The Hadeeth of Buraidah: "When you meet your enemy from the Mushrikeen then call them to three Khisaal (options)... Then if they refuse (to enter into Islaam) then ask them to pay the Jizyah" (Saheeh Muslim).
1463)	Secondly: The opinion we find to be strongest:
1464)	The permissibility to convene the contract of Dhimmah with every category and people of any belief and even atheists. Any of them who reside in the Jazeerat-ul-'Arab (Arabain peninsular) according to the borders that the state has adopted are ordered to leave it and not settle their except on a temporary basis or for travelling through. The contract of Dhimmah is then made for them outside of these specified borders. And it is not allowed to convene the contract of Dhimmah with apostates. With these above Ahkaam we have brought together all of the texts that relate to this issue.
1464)	The second issue: The conditions for the obligation of Jizyah. They are: Al-'Aql (possession of mind), Al-Buloogh (puberty/maturity), Adh-Dhukoorah (being male), health (As-Sihhah), being free of chronic illness, blindness and very old age in addition to the Faqeer (impoverished) who does not work. And from them is freedom etc...
1465)	The fourth issue: Alternative to (replacing) the Jizyah.
1466)	About the idea of Muhammad Abu Zahrah to generalise the obligation of Zakaah upon non-Muslims in return for not paying the Jizyah.
1466)	Is it permitted for the state under the pretext of the Maslahah (benefit/interest) to convene the contract of Dhimmah upon the non-Muslims upon the basis of obliging Zakaah upon them as an act of equality between them and the Muslims as a replacement for the Jizyah.
1469)	The answer: The majority of the Fuqahaa have permitted that in the situation where the Maslahah calls for it built upon the treaty of 'Umar Ibn Al-Khattaab (ra) with the Christians of Bani Taghallub in regards to that.
1469)	It is not from the valid Maqaasid (aims) to harm the people of Dhimmah either by word or act.
1469)	The prohibition of backbiting a Dhimmi like a Muslim and the Muslim is prevented from saying to the Dhimmi: Yaa Kaafir (O Disbeliever) or Yaa 'Aduwallah (O enemy of Allah)!
1469)	The Hadeeth: "Except for the one who oppresses a Mu'aahad (one under covenant/treaty) or degrades him... For I will be his opponent on the day of judgement" Abu Daawood.
1471)	SECTION THREE The covenants/treaties (Mu'aahadaat) and security (Al-Amaan).

1472)	The first issue: The definition of Al-Mu'aahadah (the covenant/treaty), its legitimacy (legality) and the Hukm of abiding by it whilst mentioning the purposes that call to convening them.
1472)	Firstly: The definition of Al-Mu'aahadah.
1472)	Conciliation with the people at war for the fighting to be abandoned for a specified period of time with an offset (financial incentive) or without it.
1473)	Secondly: The legality of the Mu'aahadah and the Hukm of abiding to it.
1473)	Nusoos (texts) from the Qur'aan Al-Kareem for the legality of the Mu'aahadah (treaty) like: <i>"And if they incline to peace, you also incline to it, and (put your) trust in Allah"</i> (Al-Anfaal 61).
1476)	From amongst the evidences from the Sunnah for the legality of the Mu'aahadah: The Sulh (treaty) of Al-Hudaybiyyah.
1477)	And the Hukm of being faithful to the treaties is summarised in the following:
1477)	1. The obligation of stopping the fighting and being faithful to the treaties as long as they are legitimate and a prevailing atmosphere upon the agreement, with evidences.
1478)	2. The obligation of abiding by the treaty ends in the following cases:
1478)	a. When its time period comes to an end.
1479)	b. If the enemy violates it or one of its conditions.
1479)	c. If the land with a treaty provides any military assistance to the enemy whom the Muslims are engaged in war with.
1479)	d. If signs appear indicating that the land with a treaty is intending to violate it and in this case it is necessary to first to break the treaty before the declaration of war.
1480)	Thirdly: The reasons and purposes that call for the convening of peace treaties with the enemy.
1481)	The weak position of the Muslims, hope that the disbelievers will accept Islaam, the hope that they will enter into the Dhimmah, the hope that they will assist the Muslims to fight another enemy, the steep costs do not make it possible to engage the enemy in fight. And in summary: The Maslahah of Islaam and the Muslims is that which is the reason for convening treaties and the evaluation of that Maslahah falls to the Khaleefah of the Muslims.

1481)	The Masaalih (interests) that were the reasons behind the convening of treaties during the Prophetic Seerah.
1482)	The legitimate Masaalih that invite the Muslims to convene Mu'aahadaat (treaties) in the current time.
1483)	The second issue: The treaty established with other non-Islaamic lands on the condition that they pay the Jizyah to the Muslims.
1484)	The first point: The Daleel for the legality of these type of treaties.
1485)	The Muwaada'ah (lodging agreement) with the King of Ailah (Yuhannaa Bin Ru'bah).
1485)	Al-Balaadhariy: Every people of a covenant ('Ahd) who do not fight the Muslims from behind them and they apply their (own) Ahkaam (rulings) in their land are not from the people of Dhimmah but rather the people of Fidyah and they fulfil what they fulfil from their agreement/covenant ('Ahd).
1486)	The second point: The statements of the Fuqahaa in regards to the legality (Mashroo'iyah) of convening treaties with non-Islamic peoples and states on the condition that they pay the Jizyah to the Muslims.
1486)	From the books of the Ahnaaf: The Mu'aahadah (treaty) is permitted without a monetary recompense but with a monetary recompense is better and taking it is considered from Al-Jihaad and it is not considered taking money so as to abandon Al-Jihaad.
1487)	From the books of the Maalikiyyah: It is permitted to convene treaties in return for a recompense or without recompense.
1487)	From the books of the Shaafi'iyah: It is permitted to enact a truce for a monetary recompense that is taken from them because there is a Maslahah for the Muslims in doing so.
1488)	From the books of the Hanaabalah: The Mu'aahadah is permitted on the condition of examination of the Muslims and differentiating between the money that is paid one time to stop a specific war and the money that is paid every year in accordance to what has been contracted.
1488)	The third issue: The Mu'aahadah in which the Muslims pay money to other states in exchange for a cessation in fighting against the Muslims.
1489)	The first point: The Daleel from the Shar'iah Nusoos (texts) permitting the payment of money by the Muslims in return for the cessation of fighting.
1489)	The negotiation of the Nabi صلى الله عليه وسلم with some of the leaders of the Mushrikeen of Khandaq related to this.
1489)	The second point: The statements of the Fuqahaa of the Madhaahib in relation to the Mashroo'iyah (legality) of the treaty that is stipulated upon the payment of money to the disbelievers in the case of Daroorah (necessity).

1489)	Al-Ahnaaf: There is no problem in requesting a treaty from the disbelievers and giving them money for this in the case of necessity.
1491)	A summary of their evidences: a. The Nass (text) permitting the Mu'aahadah (treaty): "If they incline to peace then you (also) incline to it" is Mutlaq (unrestricted) and therefore it is permitted to be done by the payment of money or without the payment.
1491)	b. The report about the negotiation of this kind of peace treaty in the battle of Khandaq.
1491)	c. If the payment of money to the Kuffaar is a way to avoid the destruction of the Muslims then it is obligatory to pay it.
1492)	Al-Maalikiyyah: This type of peace treaty is allowed in the state of fear.
1492)	Ash-Shaafi'iyyah: When capitulation is feared then it is permitted to make payment of money to the Kuffaar and indeed it is obligatory according to the most correct opinion.
1492)	The like of this peace treaty (Sulh) is permitted at the time of Daroorah (necessity).
1493)	The third point: Some of the Bamu Umayyah made this agreement with the enemy and paid money to them in return for them to stop fighting against the Muslims.
1493)	Mu'aawiyah Bin Abi Sufyaan and Abdul Maalik Bin Marwaan made a peace treaty with the Romans under specific circumstances upon the basis of paying money to the disbelievers so that they would refrain from fighting against the Muslims.
1494)	The fourth issue (Mas'alah): The other types of Mu'aahadah (treaty) according to the circumstances.
1494)	Illustrations of types of treaty that have been indicated.
1497)	Al-Qalqshindi says in regards to the differences in treaties due to the difference of the conditions they contain: 'It does not have a limit or fixed principle to regulate it but rather it is in accordance to what the Daroorah (necessity) calls for in respect to the Hudnah (truce/peace) in accordance to the circumstances of the reality'.
1498)	The fifth issue: What is Al-Amaan (security)? And what is the Daleel in relation to its Mashroo'iyyah (legal legitimacy)? And what is its role in relation to stopping the fighting with the people at war (Ahl-ul-Harb).
1499)	Firstly: Al-Amaan: What is it?
1499)	It is a form of Muwaada'ah (peace treaty with payment) because it

	includes the leaving of fighting like the Muwaada'ah.
1499)	What is intended by it here is the Amaan (security) that is granted to both sides, each to the other.
1500)	Secondly: The Daleel upon the legality of a regular Muslim (i.e. not in position of authority) giving the Amaan to the enemy.
1500)	"The Dimmah (protection) of the Muslims is one" (Agreed upon).
1500)	The giving of security of Umm Haani to two men from amongst her uncles on the day of the conquest of Makkah who were from amongst those who were not bound by the general conditions of security that was granted to the Mushrikeen which were to stay in the houses or in the Masjid and to throw down their weapons. They (the two men) were from amongst those who fought on that day and the Nabi صلى الله عليه وسلم allowed her giving of protection: "Qad Ajarnaa Maa Ajarti Yaa Umm Haani".
1501)	Thirdly: The role of Al-Amaan in regards to the cessation of fighting with the people at war.
1502)	It is obligatory to stop fighting with the people of war who have been granted Amaan (security) and this has been affirmed by all of the Madhaahib of Fiqh – The texts from the books of Fiqh in relation to this Mas'alah.
1503)	This also applies if a group or community of Muslims enter into the lands of war with an Amaan (security) where the enemy has given security until they leave them.
1503)	It is for the person in authority to regulate the Muslims use of the right of giving security to the Kuffaar in accordance to that which does not cancel out this Haqq from one angle whilst from another angle it is not used as a means to bring harm.
1505)	SECTION FOUR Al-Ash'hur Al-Hurum (the inviolable months).
1505)	The first issue: What is meant by the inviolable months? And what is the meaning of the Tahreem (prohibition) of the Ash'hur Al-Hurum? And what is the evidence for the Tahreem of fighting in them? And what is the Hikmah in that?
1505)	Firstly: What are the Ash'hur Al-Hurum?
1505)	It is: "The three consecutive months: Dhu-l-Qa'dah, Dhu-l-Hijjah and Muharram and then Rajab the month of (the tribe of) Mudar (i.e. the fourth)" (Agreed upon).
1506)	The meaning of the Tahreem (prohibition) of the inviolable months: It has been called Hurum for two meanings: The Tahreem of Al-Qitaal in

	them and the Ta'zheem (greatness) of the acts of obedience within them.
1506)	Hadeeth: "Abu Rajaa Al-'Utaridy: We used to worship stones... When the month of Rajab came, we used (to stop the military actions), calling this month the iron remover, for we used to remove and throw away the iron parts of every spear and arrow in the month of Rajab" (Al-Bukhaari).
1507)	Thirdly: The Adillah (evidences) for the Tahreem of fighting in the Ash'hur Al-Hurum.
1507)	<i>"They ask you concerning fighting in the sacred months. Say, "Fighting therein is a great (transgression)"</i> (Al-Baqarah 217).
1510)	<i>"The sacred month is for the sacred month, and for the prohibited things, there is the Law of Equality in reciprocation (Qisaas)."</i> (Al-Baqarah 194).
1510)	<i>"O you who believe! Violate not the sanctity of the symbols of Allah, nor of the sacred month"</i> (Al-Maa'idah 2)
1511)	<i>"Verily, the number of months with Allah is twelve months (in a year), so was it ordained by Allah on the day when He created the heavens and the earth; of them four are Sacred. That is the right religion, so wrong not yourselves therein"</i> (At-Taubah 36)
1512)	Jaabir Bin Abdullah (ra): "The Nabi صلى الله عليه وسلم did not make military expeditions in the Shar-ul-Haraam (forbidden month) unless he was attacked or they attacked and if that occurred he would stand against that until they had withdrawn" (Saheeh Sanad from Ahmad).
1512)	Fourthly: What is the Hikmah (wisdom) for the prohibition of Al-Qitaal (fighting) in the Ash'hur Al-Hurum?
1512)	It had been since the time of Ibraaheem (as) and Ismaa'eel (as) so as to extend security to the people in the months of Hajj and 'Umrah.
1513)	And in the time of Islam it was to free up time for other acts of 'Ibaadah (worship) other than fighting the Kuffaar and to consolidate Islaam in the lands that had been conquered.
1514)	The second Mas'alah: The opinion that the prohibition of fighting in the inviolable months has been abrogated with the evidences for this view.
1514)	The Jumhoor (majority): Al-Qitaal in the Ash'hur Al-Hurum used to be prohibited by Islaam except in the case of repelling an aggression. Thereafter the Hukm was abrogated and the legality of Al-Jihaad took its place and the beginning of fighting the Kuffaar in every time.
1515)	The Adillah of the Jumhoor:

1515)	Firstly: From the Quranic Nusoos (texts):
1515)	a. <i>“And fight against the Mushrikoon (polytheists, disbelievers)”</i> (At-Taubah 36)
1515)	b. <i>“Then kill the Mushrikoon wherever you find them”</i> (At-Taubah 5).
1516)	c. <i>“Fight against those who believe not in Allah, nor in the Last day”</i> (At-Taubah 29)
1516)	Secondly: Adillah from the Seerah Nabawiyah:
1516)	The Nabi صلى الله عليه وسلم attacked Hawaazin at Hunain and Thaqeef and Taa’if and set Abu ‘Aamir to Awtaas to make war against the Mushrikeen there in some of the forbidden months.
1516)	The Bai’ah of Ridwaan to fight against the Quraish was in the Dhu-l-Qa’dah.
1517)	And it is known that all of this occurred after the cause (Sabab) of revelation of the Aayaah: (They ask you concerning the Shahr-ul-Haraam (prohibited month) and fighting in it. Say fighting in it is great (transgression)) which was the raiding party (Sariyyah) of Abdullah Bin Muhsin. So this indicates that the previous prohibition had been abrogated.
1517)	The third issue: The opinion of the continuation of the Tahreem of fighting in the prohibited months and a discussion around the evidences of the majority in relation to the opinion of this Tahreem (prohibition) having been abrogated.
1517)	‘Ataa Ibn Abi Rabaah: Says that the Tahreem remains (i.e. not abrogated).
1518)	A discussion of the evidences for the Tahreem (prohibition).
1518)	Firstly: The previously mentioned texts from the Qur’aan Al-Kareem – They indicate the legality of fighting the Kuffaar at all times (i.e. generality) and the evidences of Tahreem indicate that fighting is not legally legitimate in the specific times of the Ash’hur Al-Hurum (Haraam months). As such the Khaass (specific) takes precedence over the ‘Aamm (general) and all of the evidences are worked with, each according to its scope.
1520)	Secondly: The evidences from the Seerah An-Nabawiyah:
1521)	The Ghazwah (military expedition) of Hawaazin, of Awtaas and the siege

	of Taa'if occurred for the reason of defending against the aggression of the Mushrikeen or a continuation of a war that had already began and there is no dispute in regards to the legality of that as they did not represent the initiation of the fight by the Muslims. Similarly the Bai'ah of Ridwaan was as a result of the aggression of the Quraish against 'Uthmaan Ibn 'Affaan (ra) which was built upon a rumour that had been spread at that time.
1522)	The fourth issue: The Tarjeeh (outweighing of evidences) in this issue.
1523)	We outweigh as stronger the continuance of the Tahreem (prohibition) based upon the Usooli principle (Qaa'idah): Working with all of the evidences and even from some aspects is better than working with some of them whilst discarding others.
1527)	SECTION FIVE The defeat, surrender and imprisonment (captivity).
1529)	The first study: The defeat of the enemy and its surrender.
1530)	The first requirement: The defeat and cessation of fighting, taking prisoners and there different circumstances, the treatment of the prisoners and their Hukm. Firstly: The defeat and cessation of fighting. The fighting ends after heavy losses (lthkhaan) has been inflicted upon the enemy. Secondly: The taking of prisoners and their different circumstances.
1530)	1. The case of those who declare their Islaam before being taken as prisoner or before surrendering.
1531)	If they were in the situation of refraining then they are considered free Muslims.
1531)	And if they were not refraining then they are taken prisoner but they are not killed because of their Islaam.
1532)	2. Those who announce their acceptance of the Dhimmah before they were taken prisoner or the surrender.
1532)	If they were refraining with their strength then the Dhimmah is accepted from them.
1533)	If however they were not refraining then there case is decided by the one possessing the authority.
1533)	Thirdly: The treatment of the prisoners.
1533)	The guidance (advice) given in regards to treating the prisoners (Asraa) well.

1536)	If the need requires the severe treatment of the prisoners then it is a mistake to keep away from that (with the Daleel).
1538)	Fourthly: The Hukm in regards to prisoners.
1538)	The person holding authority has a number of options in regards to making judgment over the prisoners (built upon the Maslahah). And when the Maslahah has been specified (found) in regards to one of the options then he must rule with it and it is Haraam for him to sway from it and choose a different option.
1539)	These options are:
1539)	1. Al-Mannu (granting freedom) of the prisoners – with the evidences for this. And the majority held this opinion except for the Ahnaaf with their evidences and a discussion about them.
1541)	2. The Fidaa' (ransom) – with its evidences. And the majority held this opinion except for the Ahnaaf with their evidences and a discussion about them.
1544)	3. Al-Qatl (killing) – with its evidences. The majority from the four Madhaahib held this opinion with the exception of what was reported from Al-Hasan with the evidences and discussion around them.
1548)	4. Istirqaaq (enslaving) – with its evidence. The majority from the four schools held this opinion.
1551)	A discussion of modern day writers who hold the opinion that enslaving prisoners is not legally legitimate according to Islaam.
1552)	It is possible to prevent the Hukm of enslaving prisoners according to a Shar'iy manner and this is via the agreement of the Islamic State with other states around this issue.
1552)	5. 'Aqd-udh-Dimmah (contract of Dhimmah) – the texts of the Fuqahaa in regards to this and a summary of it.
1553)	The contraction of Dhimmah for the prisoners: It can occur as a right of the person holding authority in accordance to following the Maslahah. This is the view of the Ahnaaf, Maalikiyyah and Hanaabalah or it can be considered a right of the prisoners themselves and if they request it, it becomes Haraam to kill them, and this is the view of the Shaafi'iyah.
1555)	The second requirement: The Hukm in relation to the surrender of the enemy.

1555)	<p>a. Is it permitted to kill the enemy is they have surrendered the battle and handed themselves in to become prisoners (of war)?</p> <p>Here there are different situations:</p> <p>Firstly: It is permitted to kill the enemy if he has surrendered before the stage of lthkhaan (inflicting of heavy losses) upon the enemy in the situation that demands lthkhaan: (The killing of Umayyah Bin Khalaf and Ibn 'Ali after their surrendering).</p>
1557)	<p>Secondly: It is permitted to kill him if he has surrendered and even after the lthkhaan (hevey losses inflicted upon the enemy) as long as he has not (already) been considered as a prisoner and the matter at that time is up to the person in authority.</p>
1558)	<p>Thirdly: If the description of prisoner is established for the one who has surrendered then it is not the right of the fighter to kill him without the command of the one in authority.</p>
1559)	<p>b. The enemy army or the people at war (Ahl-ul-Harb) generally, those refraining in their forts or forces. What is their Hukm if they surrender to the Muslims without restrictions or conditions?</p> <p>They are treated like prisoners and are judged in accordance to one of the five options mentioned earlier – The incident of Bani Quraizhah.</p>
1560)	<p>What has been transmitted in the books of Fiqh about this issue.</p>
1565)	<p>The second study: The defeat of the Muslims to the enemy and their surrender.</p>
1565)	<p>Introduction: A glance at the reasons/causes (Asbaab) of victory (Nasr) and defeat (Hazeemah).</p>
1569)	<p>The first requirement: What is obliged upon the Muslims if they are defeated by the enemy?</p>
1569)	<p>Return back to Allah, cling on to patience, treat the gaps (shortcomings) and preparation to cleanse the effects of defeat.</p>
1570)	<p>The Ghazwah (military expedition) of Hamraa-ul-Asad on the back of the Ghazwah of Uhud.</p>
1573)	<p>The second requirement: Is it permitted for Muslims as individuals or groups to surrender themselves and hand over their lands to the enemy?</p>
1573)	<p>The first issue: Is it permitted for Muslim individuals to surrender to the enemy?</p> <p>It is permitted to surrender when it is hoped that being killed can be escaped from just as it is permitted to refuse to surrender and even if he is killed as a result of his refusal (The story of the people of Ar-Rajee') and</p>

	detail in regards to it.
1576)	The second issue: Is it allowed for a group (segment) from amongst the Muslims in their land to surrender and hand over their land to the enemy?
1577)	It is permitted for them to fight until they are killed or to fall into captivity against their will. Just as it is permitted for them to surrender from the beginning under its conditions and the lands of the Muslims does not hold a higher sanctity than the Muslims themselves. So handing over some land to the disbelievers in the desperate situation of necessity does not occur upon the basis of giving it up permanently for ever but rather it is done in hope of re-attaining the strength to return it. This is by way of choosing the lightest of the harms in the view of those who make this choice.
1578)	The handing over of Granada and an explanation of the reason for not being able to return it after that.
1580)	Did the leaders of the Muslims become aware after the lessons of Andalus (Spain) and work to prevent the repeated tragedy in Palestine and other (lost) Islaamic lands?
1581)	The third requirement: What is the duty of the Muslims towards their prisoners or from their Dhimmis if they fall into the hands of the enemy?
1581)	Firstly: The Shar'iyah Nusoos about rescuing the prisoners from the Islamic lands if they fall into the enemy's hands.
1581)	"Untie (free) the one suffering (meaning the prisoner)" Al-Bukhaari.
1582)	The Nabi صلى الله عليه وسلم requesting to be granted from Salamah Bin Al-Akwa' the girl Al-Fazaariyah who he had taken captive, then send her to Makkah to be ransomed for Muslim prisoners who were held there (Saheeh Muslim).
1582)	The Nabi صلى الله عليه وسلم ransomed the prisoner Al-'Uqaaliy for two of the Sahaabah who had been imprisoned by Thaqeef.
1583)	The statements of the Fiqhi schools (Madhaahib) in relation to this Mas'alah.
1584)	What was mentioned in the Cypriote message of Ibn Taymiyyah in regards to this?
1585)	'Umar Ibn Abdul-Azeez said to his messenger to the Romans in relation to the rescuing of the Muslim captives in their hands: 'Give them for every Muslim whatever they desire for by Allah the single Muslim man is dearer to me than every Mushrik that I have. What you ransom a Muslim for you have triumphed you have indeed only purchased Islaam!'. Thirdly: That which is strongest: That in regards to the prisoners from the people of the Islamic lands whether Muslim or from the people of
1586)	

	Dhimmah, the ransoming is obligatory upon the Muslims by any legitimate Shar'a way.
1589)	The third study: Hostages: Do they differ from prisoners?
1589)	<p>Firstly: What is intended by the term Rahaa'in (hostages) in this discussion?</p> <p>The first point: According to the modern day custom hostages are:</p> <ol style="list-style-type: none"> 1. Those taken hostage are from the subjects of the land from which those who committed the act of hostage taking also belong to. 2. Those who are taken hostage from amongst the foreigners who are residing in the land as Musta'maneen (those granted security). 3. Those that the state seizes from amongst the foreigners upon its lands. 4. Those who are taken hostage are foreigners and they are not in the land which those taking them hostage belong to (We have already stated earlier those whom it is permissible to take hostage and those whom it is not).
1590)	The Rahaa'in (hostages) according to the Islaamic Fiqh.
1590)	They are the people who are handed over by their state or people to those whom a treaty has been contracted with in which it is stipulated upon both parties or one of them to present human hostages to the other as a guarantee for the treaty on the basis that the Rahaa'in (hostages) will be returned to their people after the end of the contracted period. This type of people are those whom we intend in this study as being Rahaa'in (hostages).
1591)	Secondly: What is the Hukm in regards to these hostages?
1592)	<p>Is it permissible for the Islamic State to give human Muslim hostages to the enemy as part of a treaty?</p> <p>Yes, at the time of Daroorah (Necessity). With details of this.</p>
1593)	<p>2. Is it the right of the Islaamic State to stipulate in the treaty with the enemies that human hostages are taken from amongst them?</p> <p>Yes, it is permitted and it is forbidden to kill them if their people betray the Muslims.</p>
1596)	3. What if the Muslims were forced by necessity to give human hostages to the enemy in a treaty and then the treaty came to an end and the enemy refuses to hand back the hostages until the achieve the prevention of Muslims undertaking Al-Jihaad upon their front?
1596)	The same is said in relation to this Mas'alah as was said in regards to the issue of taking human shields from amongst the Muslims, and this has

	been presented there.
1596)	<p>4. What if the Muslims were forced by necessity to give human hostages to the enemy in a treaty and then the enemy threatened to kill the hostages if the Muslims go ahead with some legitimate matters which it sees as harmful to its interests?</p> <p>The one in authority decides that which outweighs:</p> <p>Either by looking at the Maslahah of the specific hostages.</p> <p>Or by looking at the Maslahah on a general (overall) level.</p>

Chapter Seven

Al-Jihaad in the current age

1599)	SECTION ONE Al-Jihaad according to theoretical (examining) research.
1601)	The first study: Al-Jihaad according to the Islamic writers – with discussion.
1601)	The first point: Extracts from that which has been said about Al-Jihaad and its definition according to the modern day Muslims.
1601)	a. That which was mentioned by Muhammad Fareed Wajdi.
1602)	b. That which is in the Arabic Mawrid encyclopaedia from ‘Al-Ba’labkiy’.
1602)	c. That which came in the Arabic Muyassarah encyclopaedia supervised by ‘Muhammad Shafeeq Gharbaal’.
1603)	The second point: A quick discussion around these extracts.
1604)	Muhammad Fareed Wajdy limited the legality of the Harb (war) or Al-Jihaad to being defensive and the removal of the Watheeqah (document) from Jazeerat-ul-‘Arab (the Arabian peninsula) and when you are called to the war that it is necessary to convene (daroorah Al-ljtimaa’). He then said: If the relations between people develops so that disputes can be resolved in a peaceful manner and war is seen as uncivilised then it is obligatory upon the Muslims to be included in this development (progress).
1604)	A discussion about the understanding of ‘Daroorah Al-ljtimaa’ that calls for war and that this idea is not clear.
1604)	A discussion about the uncivilised nature of war.
1606)	The Mawrid Encyclopaedia defines Al-Jihaad as the war in the way of Allah to spread the area of Daar-ul-Islaam or to defend it.
1606)	Discussion: It is possible to accept this definition as it is another way of expressing the declaration of Al-Jihaad to enter the Kuffaar into the Dhimmah of the Muslims if they refuse to enter into Al-Islaam and to join their lands to the Islamic State just as it is legitimate to defend the Islamic lands. However the definition in the encyclopaedia neglected to mention the defence of Muslims who do not belong to Daar-ul-Islaam.
1606)	The Arabic Muyassar encyclopaedia: It mentions that Al-Jihaad is legitimate as a defence against aggression and this includes the offensive Jihaad. It then mentioned that the wars of the Muslims was established upon the invitation to Islaam, or Mu’aahadah (treaty) or Al-Qitaal (fighting).
1607)	Discussion: If what is intended by Al-Mu’aahdah (treaty) the contraction of Al-Jizyah and the entering of the lands under the Islaamic authority, then

	<p>this is correct. And if the intended meaning was foreign peaceful treaties then this is not included within the three original choices (options) that are presented to other nations which are: Al-Islaam or Al-Jizyah or Al-Harb (war) – rather it is left to the people in authority according to the Maslahah.</p> <p>The word ‘Jihaad’ in many of the modern writings has been given the meaning of ‘Juhood’ (efforts) that are expended in the way of the general (public) Masaalih (interests) like education, the spreading of guidance, political work and the building of institutions that benefit the Ummah.</p>
1607)	Example: What Abdur Rahmaan Ar-Raafi’iy mentioned in his work about the Egyptian leader Muhammad Fareed.
1608)	Example: What came in the Da’wah (invitation) of Doctor Muhammad Sa’eed Ramadhaan Al-Bootiy to the Muslim Ulamaa’ to set aside disputes existing between them and to turn their attention to increasing the awareness of the Islamic Ummah.
1609)	Example: What came from Ash-Sheikh ‘Abdul Mta’aal As-Sa’eediy in regards to the Jihaad of Jamaal Ad-Deen Al-Afghaani and Muhammad Abduh in the work to make the Egyptians pay attention to the neglect and carelessness etc.
1611)	The second study: Al-Jihaad mentioned in the books of non-Muslims and their encyclopaedias with a discussion about this.
1611)	The first point: Extracts about the subject of Al-Jihaad within the writings and encyclopaedias of the non-Muslims.
1614)	<p>a. From Karl Brookelman</p> <p>b. Philippe Fondasi.</p> <p>c. Dominique Sordeel</p> <p>d. What was mentioned in the encyclopaedia of Butrus Al-Bustaani</p> <p>e. What was mentioned in the Islamic encyclopaedia of a group of orientalist.</p>
1614)	The second point: A quick discussion of the above extracts.
1614)	<p>a. Karl Brookelman – a discussion.</p> <p>1. Errors in his assumption that the people of the book alone are those who are called to Islaam before Al-Qitaal in contrast to the polytheists who are not invited whilst the reality is that there is no difference between them in regards to the Hukm.</p>
1614)	2. Errors in relation to the fate of the disbelieving fighters if they have been defeated and fall into the hands of the Muslims, that it is restricted to being killed whilst the reality is that there are five options in relation to

	<p>them according to the Maslahah as we presented previously when discussing the Hukm of the prisoners.</p>
1615)	<p>b. Philippe Fondasi – a discussion.</p> <p>That Al-Jihaad is resorted to for one of two purposes or goals: a) To make war against the Kuffaar b) To make war against the foreign dominance/control, whilst the reality is that these two Fards (obligations) are from amongst the circumstance in which Al-Jihaad is legislated. And it would have been better for the writer to explain the aim that Al-Qitaal ends at which is: The entering of the Kuffaar into Al-Islam or their acceptance of the Islamic sovereignty and their entering into the Dhimmah (protection) of the Muslims.</p>
1615)	<p>c. Dominique Sordeel: Discussion.</p> <p>1. He said that Al-Jihaad is not an individual obligation but rather one of Tadaamun (solidarity). And his meaning is that it is a Fard of Kifaayah (sufficiency) and not Fard 'Ain (upon the individual) and the reality is that it can become Fard 'Ain in a number of situations as has been previously explained.</p> <p>2. The writer explained the Hukm of the prisoners in the following manner:</p> <p>That if they fall into captivity after defeat then the Hukm (judgment) upon them rests with the head of the authority however he did not explain that the head of the authority is restricted in his judgment by one of the five options mentioned previously and that the choice is made based upon the outweighing Maslahah (interest).</p> <p>And in the situation where they fall into the hands of the Muslims via surrendering then the writer mentions that is allowed to convene the contract of Dhimmah with the people of the book and some of the polytheists from amongst the Hunood (Indians) meaning Al-Majoos (magians) whilst other than them do not have this right. And we have already detailed the opinion in regards to this matter and we have outweighed to be strongest (Raajih) the legality of accepting the contract of Dhimmah from all of the disbelievers.</p>
1616)	<p>d. What was mentioned in the encyclopaedia of Butrus Al-Bustaani</p> <p>Al-Bustaani mentioned what was mentioned by the Muslim Fuqahaa about Al-Jihaad and he did not provide his own specific perspective.</p>
1616)	<p>e. What was mentioned in the Islamic encyclopaedia of a group of orientalist.</p> <p>This encyclopaedia stirred a number of issues which were:</p> <p>1. Spreading Al-Islam by the sword is a Fard Kifaayah – discussion about this.</p> <p>If they intend by this the forcing of people to enter into Islam then this is</p>

	<p>not correct with a detailed discussion of the issues that have instigated some confusion in regards to this point.</p> <p>And if they intend by the spreading of Islaam by the sword that the Muslims used power to remove the obstacles that stood in the way of the people entering Islaam or to enter under its rule, then this is correct. This is despite the expressions that they utilised to explain this reality being deliberately vague so as cause confusion.</p> <p>2. The statement that the type of Al-Jihaad that has been legislated by the Qur'aan is restricted to the defensive form however when the Nabi صلى الله عليه وسلم made the aggressing opposition submit to him this drove his ambition to make all of the disbelievers submit to him and even if (in origin) they were not aggressors – And a detailed response (rebuttal) to this.</p> <p>3. Islaam makes the continuation of Al-Jihaad obligatory until all of the people (in the world) have entered under the rule of Islaam.</p> <p>And this assertion is correct, in all that is possible to be achieved so that all of mankind can be blessed with the citizenship of the Islaamic State and its manner of taking care of their affairs.</p>
1623)	SECTION TWO Al-Jihaad in the reality of war (in the current age).
1625)	The first study: The current military alliances in which Muslims participate in fighting other than them against other regions.
1625)	The first issue: What are the military alliances?
1625)	And what is the Hukm Shar'i in regards to the Muslims binding themselves to other states in these alliances?
1625)	<p>Firstly: What are the military alliances?</p> <p>They are agreements between two or more states for the purpose of participating (together) in fighting or what is similar to that against a shared enemy and so on...</p>
1626)	Secondly: What is the Hukm of Muslims joining with other states in military alliances?
1627)	<p>Ash-Sheikh Taqiyy-ud-Deen An-Nabhaani mentions that these alliances are Baatil (invalid) according to the Shar'a and he supported this view with the Hadeeth: "Do not seek light with the fire of the Mushrikeen".</p> <p>And I view that the Hukm Shar'i in this issue rests upon two points:</p>
1627)	The first point: Is there a Saheeh Shar'i text that indicates with a clear Dalaalah (textual implication) that it is Haraam absolutely (Mutlaqan) for the Muslims to enter into a military alliance with non-Islamic states?

1627)	<p>The Hadeeth: “Do not seek light from the fire...” is a Kinaayah (metaphor for the forbiddance of:</p> <p>Residing in Daar-ul-Kufr, or be enlightened or seek light from the Kuffaar or request protection from the Kaafir army or to request to enter into a military alliance seeking protection from the enemies.</p> <p>It is observed from the text: “Laa Tastadee’oo.../Do not seek the light” that it applies to the situation in which the Muslims are the weak side who are seeking the light i.e. protection so the seeking of light of the Kuffaar from the Muslims is not taken then when the Muslims are the more powerful side.</p> <p>The seeking light of the Kuffaar by the Muslims, with the meaning of entering into an alliance with the Muslims to be protected by them and the Muslims extending their protection over them, then the Nabi صلى الله عليه وسلم approved for (the tribe of) Khuzaa’ah to be entered into its side in the Sulh (treaty) of Al-Hudaybiyyah.</p> <p>From the angle of the level of Sihhah (correctness) of the Hadeeth: "Laa Tastadee’oo".</p> <p>It appears that it is not Saheeh in terms of its Sanad due to the Jahaalah (not being known/identifiable) of one of its transmitters.</p>
1632)	<p>The second point: What is the general Shar’iyah principle under which forming alliances falls under? It is: “Laa Darar Wa Laa Diraar/The is no harm and causing of harm” and there is no doubt that military alliances with the major states (as today’s reality guides to) would lead to a harm falling upon the Muslims and therefore the Hukm for this is one of Tahreem (prohibition) and Batlaan (invalidity).</p>
1636)	<p>The second issue: The military alliance that justifies the war upon the Islaamic regions – Is it allowed for the Muslims to join it?</p>
1636)	<p>It is known from the Deen by necessity that the Muslims fighting against their brothers and the like of these alliance forming is from the Kabaa’ir (major sins).</p> <p>“And whoever carries a weapon against us is not from us” (Agreed upon).</p>
1636)	<p>The third issue (Mas’alah): The alliance that is restricted the legality of the war against non-Islamic regions. Is it permitted to join it? It is permitted with conditions and the Fatwaa of Al-Haithami in relation to the legality of the Muslims fighting with Kuffaar against other Kuffaar.</p>
1639)	<p>The second study: Leasing military bases, airports and the selling of weaponry and strategic materials in addition to other forms of aid.</p>
1639)	<p>The first point: What is meant by military bases and strategic materials?</p>
1639)	<p>Firstly: The meaning of military bases.</p>

	Important land locations, or coastal that the major states set up inside the borders of other nations.
1641)	Secondly: What is meant by strategic materials? All of the services that are included in the implementation of military operations and aid in achieving victory in war.
1641)	The second point: Are there specific Shar'iyah Nusoos (texts) that deal with the issues laid out in this study? There are a number of Nusoos.
1641)	a. The forbiddance of the Nabi صلى الله عليه وسلم to sell weapons from the people of war... however this is not established.
1641)	b. The forbiddance of the Nabi صلى الله عليه وسلم of selling weapons during the Fitnah... however this ia also not established.
1642)	c. A text that it is understood from it that it is permissible to sell weapons to the people of war in return for weapons that hold greater value. The Hadeeth of Dhu-I-Jawshin in regards to his offer of horses to the Nabi صلى الله عليه وسلم and the offer of the Nabi صلى الله عليه وسلم of shields from the battle of Badr in exchange for that. However the Hadeeth is not Saheeh.
1643)	d. The Hadeeth of Khabbaab Bin Al-Aratt: I was a blacksmith in Makkah so I made a sword for Al-'Aas bin Waa'il.
1644)	e. What was mentioned in the story of K'ab Bin Ashraf and the statement of the Sahaabah to him: And all of us hold you ransom to the Ummah – meaning the weapon.
1644)	The Nabi صلى الله عليه وسلم pawning his shield with the Jew.
1646)	The third point: What is the general Shar'iyah principle under which these Masaa'il (issues) discussed in this study fall under? What are the opinions of the Fiqhi Madhaahib around that? What is the opinion that we find strongest in relation to it.
1646)	Firstly: The general Shar'iyah principle is: That there is no harm and no harming. So everything that by its nature results in harm including actions and things, are prohibited according to the Shar'a and even if these acts or things were permissible in origin.
1647)	Secondly: The opinions of the Fuqahaa: The word of the Fiqhi Madhaahib has agreed upon the Tahreem of selling the Kuffaar that which will give them an advantage over the Muslims in war. Extracts taken from the Madhaahib.
1651)	Thirdly: My opinion in this issue.

	<p>There is not an established specific evidence in regards to prohibiting working with other lands upon any contract from the Shar'iyah contracts dealing with materials, services or legitimate aid, in origin.</p> <p>However, the Qaa'idah (principle) of 'Darar' (harm) judges in this issue, so every matter or thing that leads to a Darar (harm) is Haraam and there is no problem with anything that does not lead to harm.</p> <p>And sections from: 'As-Siyar Al-Kabeer and its Sharh' explains the legal legitimacy of presenting weapons and military assistances to the people of war in specific circumstances if a benefit is accomplished by it.</p>
1655)	The third study: The wars of Islaamic regions in regards to what is between them.
1657)	<p>The first requirement: The Shar'iy Takyeeef (behaviour) for wars between the Islaamic regions.</p> <p>It is Al-Qitaal of Fitnah. The meaning of Qitaal Al-Fitnah and its cases:</p> <p>The recent conflict in the Gulf and the contradictions of the Islaamic directions in regards to its decisions in relation to it.</p> <p>It is confirmed that many of the conflicts between Muslims represent a form of Fitnah and an explanation of the contradictions.</p>
1661)	The second requirement: The position of the non-combatant Muslims in regards to these wars.
1661)	<p>The position of making efforts towards Islaah (mending):</p> <p><i>"And if two parties or groups among the believers fall into fighting each other, then make peace (Islaah) between them"</i> (Al-Hujuraat 9)</p>
1662)	Imaam Al-Qurtubi details in some way how the work of performing Islaah between two conflicting sides is undertaken.
1662)	<p>When the Islamic Khilaafah is present then she is the one who possesses the decision in judging between the conflicts that may occur between Islamic regions that are under its domain.</p> <p>And the Shar'i judgement according to Islaam by sending each side a judge whom it is content with and to make a covenant to accept the judgments that are issued.</p> <p>This is the direction that must be returned to in order to break up the conflicts and this is in light of the following:</p>
1664)	a. Defining the powers of authority belonging to the two judges in regards to issuing the binding rulings to solve the problems that have caused the conflict.

1664)	b. Make the Islamic legislative sources the sole reference point for issuing solutions and rulings.
1664)	c. Take a covenant (oath) from each party involved in the dispute and from every leader of the Islamic lands to accept the solutions that the two judges have agreed upon and the legislated decisions to end that current dispute. And that a Shar'i sin would result in exiting from these solutions and decisions.
1664)	d. When the solutions and decisions are issued and everyone has agreed to them then the issue is resolved and dealt with and Allah is sufficient for the believers to fight for.
1664)	e. The party that rejects the solutions and decisions is considered Baaghiy (rebellious) and it is obligatory according to the Shar'a for the Islamic forces within the regions and others to to interfere to deal with the dispute by force.
1664)	f. The two judges have the mandatory powers in relation to how the armed forces should mobilise within the Islamic regions so as to solve the existing dispute. The binding Shar'a description to solve the dispute by way of judgement emanates from the Ijmaa' As-Sahaabah when they returned to this type of judgement at the time of the Fitnah between 'Ali and Mu'aawiyah (rah).
1667)	The third requirement: The situation of those who are forced to fight in the wars that take place between the Islaamic provinces: The Fatwaa of Ibn Taymiyyah in regards to the fighting in the situation of Fitnah.
1668)	Initiating the fighting of the Fitnah is not permitted. It is obligatory upon if he is compelled to attend the battle not to take part in fighting and even if he is killed by the Muslims.
1669)	In 'As-Siyar Al-Kabeer and its Sharh': Close to what Ibn Taymiyyah said.
1669)	If a fighter arrives at the battlefield where it is the fighting of Fitnah (and he is compelled) then what should he do?
1669)	Answer: He refrains from any act that the killing of Muslims results from by either abstaining from the fighting in origin or by directing his fighting actions in a way that no one from those it is prohibited to be killed are afflicted by him.
1669)	What if the compelled fighter meets in battle with his brother from the other side, face to face and the other is ready to kill him?
1669)	It is permitted for him to surrender to being killed and he will be from amongst the Shuhadaa of the Aakhirah because he was killed Mazhlooman (unjustly).

1669)	Just as it is permitted for him to defend himself and then if he is killed he is still considered from the Shuhadaa of the Aakhirah because he was killed Mazhlooman and if he was to kill the other Muslim then he will be excused because his fighting was for the reason of defending his life. This is legitimate: What Ibn Taymiyyah said in regards to this.
1669)	If those who are forced to fight in the fighting of Fitnah go out to the battlefield and surrender is offered to them to become captives alone of the other side as a way out of the necessity of fighting Muslims, then it is obligatory upon them to surrender because in this situation it is specified as a way to keeping away from falling into Haraam just as it is way of resorting to the lesser of two evils.
1671)	The fourth study: The fighting organisations in the Islamic world: What is the Hukm Shari'i in relation to their activities?
1673)	The first requirement: The most important idea based fundamental that these organisations are based upon in relation to use of weapons and the position of the Shar'i Ijtihad in regards to them.
1673)	The first issue: What are the most important fundamental premises that these fighting organisations rely upon in relation to carrying weapons for the sake of achieving its objectives? The most important of these are:
1673)	1. To liberate the Islamic lands from the colonising disbelievers occupation like the National liberation front of Algeria or Fatah in Palestine.
1674)	2. Striving to cut parts of the Islamic lands which are subservient to independent states in the Islamic world for the purpose of establishing new independent statelets within the Islamic lands like the Western Saharan Front.
1675)	3. The assassination of personalities which the organisation or group judges to have committed treachery to the Deen or to the nation for the purpose of protecting Islaam or the nation with their claim that these personalities represent a threat, like the Iranian Fadaa'iyat Islaam group.
1675)	4. The work to overturn the systems (regimes) of ruling in the standing states in the Islamic world and establish the Islamic state upon its debris like Jamaa'at-ul-Jihad in Egypt.
1677)	The second issue: What is the position of the Shar'i Ijtihad in relation to these main premises i.e. in terms of the legal legitimacy of carrying arms based upon them or the lack of legitimacy.
1677)	Firstly: Using weapons (force) upon the basis of fighting the enemy who has wrongfully seized the Islamic lands is considered to be of Al-Jihad that is Waajib upon the Muslims as a whole.
1677)	The words of Doctor Fathi Ad-Dareeni on the international Quds day in the Iranian cultural consulate in Damascus, Syria.

1677)	The speech of one from amongst the leadership of the Palestinian organisations at the same event.
1678)	The speech of the Iranian cultural consultant in Damascus at the same above event.
1679)	Secondly: Using weapons (force) upon the basis of striving to establish independent states from the body of existing independent states within the Islamic world is an act that is not legally legitimate.
1680)	Thirdly: Using weapons (force) upon the basis of political assassinations and getting rid of the personalities that those who are behind these acts label as traitors and criminals in regards to the Deen and the nation, is not legally legitimate. (Refer to: The study about Al-Qitaal for the purpose of defending the general sanctities, the study (Discussion) about Al-Qitaal against the deviation of the Haakim (ruler) and the study about Al-Qitaal to establish the Islamic State).
1681)	Fourthly: Carrying weapons (using force) upon the basis or pretext of overturning the systems and regimes of ruling standing in the states of the Islamic world for the purpose of establishing the Islamic State. (Refer to: The discussion: Al-Qitaal to establish the Islamic State). A summary of the above: If the factors of success for the establishment of the Islamic State are fulfilled and present in terms of public opinion and the thought being in place in addition to the local and international circumstances being favourable and the power to make the change has been made ready, then the action is Mashroo' (legally valid). This is because the State in this case is present within the womb of the Ummah. So that which does not come into being by peaceful natural means must inevitably come by way of wounds in which weapons (force) are used to save the Ummah and to give birth to it (the state). The Bai'ah of war from the Ansaar at the second Ba'iah of Al-'Aqabah is the Daleel for the legitimacy of this. However if any of the essential factors are not in place for the establishment of the State to be successful according to what is thought to be most preponderant then the inability to establish the State is a Shar'i excuse to delay the attempts that thrown in the direction of this target and goal. And hastiness in going forward with these ventures in this situation leads to many tragedies and pains and a great sin is carried by those making these ventures in terms of what they have committed of shortcomings in terms of measurement and evaluation (of these realities).
1683)	The second requirement: The different directions of financial, military and political support that these organisations depend upon and the position of the Shar'i Ijtihad in regards to them.
1683)	The first issue: What are the directions (sources) from which support in its different forms come from for the organisations?

1683)	<p>1. In the area of financial support: From the organisation itself, continual monthly payments: What was mentioned in regards to this in the book: 'Notes of the Da'wah and the Da'wah carrier' by Ash-Sheikh Hasan Al-Banaa.</p> <p>External to the organisation from individuals, official institutions locates in Islamic lands.</p> <p>What was mentioned in regards to this in the book: 'Notes of the Da'wah and the Da'wah carrier'</p> <p>And what was mentioned by Talaal Khaalidi about the huge financial support that the PLO obtained.</p>
1688)	<p>b. Military support: Support from inside the Islamic lands like the support of Algeria to Libya and to the Polisario (West Saharan movement), and support from outside the Islamic world like the support of Russia, Korea and Vietnam to Polisario as well.</p>
1685)	<p>c. Political support/assistance:</p> <p>The support of some Arab lands to some Palestinian resistance groups.</p> <p>Support from outside the Islamic world like the support given by Cuba, Vietnam and the Soviet Union to the Polisario Front in the Western Maghrib.</p>
1686)	<p>The second issue: The fighting organisations (movements) receiving support from different sources. What is the position of the Shar'i Ijtihad in regards to this?</p>
1687)	<p>Firstly: The political support in its different varieties: It is a matter that is specific to the sources that grant it and there is no doubt that the legitimate organisations benefit from this and even if the sources that are giving their support are from non-Muslims or from outside the Islamic world.</p>
1687)	<p>However it is not permitted to compromise from the legitimate (legislated) issues which are inevitable on the way to securing the support or reciprocation to its people.</p> <p>Reciprocating to its people in matters that are legally legitimate: Like the forbiddance of the Nabi صلى الله عليه وسلم of killing some of the Mushrikeen at Badr, due to their good stance previously (towards the Muslims and the Da'wah).</p>
1687)	<p>Secondly: The financial and military aid/support:</p> <p>a. The support by way of a gift or aid without being given a return openly or secretly. It is permitted to accept this and even from the disbelievers and even if they were from outside the Islamic lands.</p>

	<p>His صلى الله عليه وسلم's acceptance of the gifts from the disbelieving Kings and borrowing the weaponry of Safwaaan Bin Umayyah before he was Muslim.</p> <p>If as a result of accepting this support the character or standing is negatively brought into question or causes doubts and suspicions thus bringing harm to the organisation and its legitimate work, then it is necessary to refrain from accepting it.</p>
1688)	<p>b. The support that seeks to achieve certain conditional aims openly or understood implicitly.</p> <p>If the aim is to gain control over the organisation or group so as to oblige its advice upon them or to distance them from their objectives then it is not permitted in the case to accept this support whether the source of this support was from inside the Islamic world or from outside it.</p> <p>If the aim is go ahead with specific legitimate actions then it is permissible to accept it.</p>
1691)	<p>The second requirement: The different kinds of fighting organisations in terms of the the field of operations in which they operate.</p>
1692)	<p>The first branch: Border (marginal) activities against the enemy.</p> <p>This is considered to be of the category of Al-Jihaad Fee Sabeelillah (in the way of Allah). Because this Al-Jihaad includes the defence of the person, the property and honour against the Kuffaar who are attempting to aggress against these sanctities... when the Niyah (intention) is good.</p> <p>And the Fuqahaa have treated this defence within the Baab (chapter/category) of Al-Jihaad within the Islamic Fiqh (jurisprudence).</p> <p>And the Sahaabah (rah) stated when defending Al-Madeenah in the battle of Al-Khandaq:</p> <p>'We are those who gave our Bai'ah (pledge of allegiance) to Muhammad upon Al-Jihaad as long as we live'.</p> <p>A glance at the opinion of Doctor Muhammad Sa'eed Ramadhaan Al-Bootiy who said it is not from Al-Jihaad according to the Shar'i Istilaah (terminology): Al-Qitaal to defend oneself or the property or honour or land... indeed it comes under the heading of As-Siyaal (to assault/use force)! (Refer back to the discussion: 'Al-Qitaal to defend the specific (private) sanctities (Hurumaat)' or 'Al-Qitaal against As-Siyaal'.</p>
1693)	<p>The second branch: Commando activities against the enemies inside of the occupied lands or inside the enemies land also falls under the category of the Shari Al-Jihaad.</p> <p>What was mentioned in 'Al-Minhaaj and its Sharh' in relation to the defensive Al-Jihaad and how it is performed according to what is possible and even if it is done by the throwing of stones.</p>

1694)	The third branch: The activities of Al-Qitaal inside of the Muslim lands against the state or some of its factions.
1694)	<p>The first issue: The carry of arms against the state in which they are based from amongst the states standing in the Islamic world:</p> <p>If the aim is to apply pressure upon the state so that it rectifies deviations, and to get rid of the symbols of Fasaad (corruption), then it is not a legitimate action because Al-Islaam had laid down a way other than this to correct the situation(s).</p> <p>(Refer back to the heading: Al-Qitaal against the ruler who has deviated).</p> <p>And if the aim is to bring the downfall of the regime and establish the Islamic State:</p> <p>Then it is Mashroo' (legally valid) with the conditions that will be presently shortly.</p> <p>(Refer back to the heading: Al-Qitaal to establish the Islamic State).</p>
1695)	<p>The second issue: Carrying arms against some factions that live in the state.</p> <p>The most prominent reflection of this reality if the fighting that occurs between Muslims and Ahl-udh-Dhimmah sometimes.</p> <p>(Refer back to the heading: Al-Qitaal of Ahl-udh-Dhimmah).</p>
1697)	<p>The fourth requirement: Al-Qitaal between organisations and the position of the Shar'i Ijtihaad in regards to this.</p> <p>If the aim of the fighting is the desire of an organisation or a wing of it to gain control over others then this Qitaal is prohibited by the Shar'a because it represents an illegal carrying of a weapon in the face of Muslims: "Whoever carries a weapon against us is not from us" (Agreed upon).</p> <p>And if the reason was to drive away the corrupt elements from some of the organisations due to their insolence over the people or their attack upon the sanctities, then it is a legitimate fighting to defend those Hurumaat (sanctities) even though this does not fall under the Baab (heading) of Al-Jihaad according to the Shar'i Istilaah (terminological meaning).</p> <p>"Provide support (victory) to your brother who is an oppressor and oppressed".</p> <p>Ibn Taymiyyah explains the Hukm Shar'i in relation to fighting the Muslim who assaults who aggresses upon the Muslims.</p>

1701)	<p>The fifth requirement: The position of Muslims in regards to internal fighting between the organisations.</p> <p>It is upon the Muslims from amongst the official leadership, and non-official leadership to stand beside the Mazhloom (oppressed) against the Zhaalim – if there is a Zhaalim and Mazhloom then there is no doubt in that – and to strive in the way of reconciling between the disputing parties when a dispute occurs between them around the rights that are disputed upon and what is similar to that.</p> <p>If the praiseworthy attempts do not succeed then pressure is resorted to upon the disputing sides to move them towards a judgement by judges and for there to be acceptance to the solutions that are issued in light of what has already preceded in the past discussion.</p>
1703)	The conclusion.
1703)	Firstly: Extracting the most important results.
1709)	Secondly: Final concluding remarks.
1719)	The sources and references.
1755)	The contents.